

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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75-7010

74-2657

74-2614

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellant-Appellee

against

GEON INDUSTRIES, INC., et al.,

GEON INDUSTRIES, INC. and GEORGE O. NEUWITH,

Defendants-Appellants

FRANK BLOOM and EDWARDS & HANLY,

Defendant-Appellees

On Appeal from the United States District
Court for the Southern District of New York

APPENDIX OF APPELLANT SECURITIES AND EXCHANGE COMMISSION

VOLUME V

TRANSCRIPTS

Pages 694 - 877b

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*Two exhibits were marked for identification as Edwards & Hanly exhibit A. (638, 698) No exhibit was marked as Edwards & Hanly exhibit E.

1 mh

Rosenfeld-direct

694

2 AFTERNOON SESSION

6/21/74 3
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2 P.M.

4 M A R T I N R O S E N F E L D, resumed.

5 DIRECT EXAMINATION (Continued)

6 BY MR. PERLIS:

7 THE COURT: Proceed.

8 MR. PERLIS: Thank you, your Honor.

9 Q Mr. Rosenfeld, once again calling your attention
10 to Securities and Exchange Commission Exhibit No. 18 which
11 is the new account card for James McMahon, do you recall,
12 sir, when you signed that in relation to when the new
13 account card was opened?

14 A No, I do not recall.

15 Q Do you manually sign each of the copies of the
16 new account form?

17 A Yes.

18 THE COURT: What do you mean by "manually sign
19 them"? Is there carbon paper in it?

20 THE WITNESS: Yes.

21 THE COURT: So you sign it through and it goes
22 through all of them?

23 THE WITNESS: Yes.

24 Q You sign it once and it goes through all of them?

25 A Yes. Unless the man has not inserted the carbon,

1 then I would do it twice.

2 Q Do you recall, sir, who filled in the item here
3 on the initial disclosure statements?

4 A My secretary does that.

5 Q I see. Thank you.

6 How many shares of Geon did you own as of
7 February 22, 1974, in your own account or your wife's
8 account?

9 A 550 shares.

10 Q How many shares did you sell on February 22nd?

11 A 550 shares.

12 Q To your knowledge, sir, did Edwards & Hanley
13 charge commissions on those shares that were sold on
14 February 22nd in Geon at the Hewlett office?

15 A My shares?

16 Q On all the shares.

17 A Any shares, yes.

18 MR. PERLIS: Nothing further.

19 THE COURT: All right. Mr. Gordon.

20 Do you mind if I reverse the order here, Mr. Strum?

21 MR. STRUM: No, your Honor.

22 THE COURT: You would rather have that? All right,
23 go ahead, Mr. Gordon.

24 CROSS EXAMINATION
25

1
2 BY MR. GORDON:

3 Q Mr. Rosenfeld, I believe you described for us
4 the nature of the training required to become a registered
5 representative.

6 Is there a different and special training
7 program in order to become a manager or a partner?

8 A Yes, there is.

9 Q Can you describe for the court the nature of the
10 training which one undergoes prior, first of all, to becoming
11 a manager?

12 A Well, one has to sit for a test administered by
13 the New York Stock Exchange and take extensive studying.
14 I went to a -- I went for a course about a week, five nights
15 of training, maybe a few weeks of studying, and then I sat
16 for, I think, maybe a three or four-hour examination.

17 Q Is there a separate examination for one to become
18 a partner of a member firm?

19 A Yes, there is.

20 Q Did you take that examination?

21 A Yes.

22 THE COURT: Who gives that, the New York Stock
23 Exchange?

24 THE WITNESS: Yes, sir.

25 THE COURT: That applies to the Amex, too?

1 THE WITNESS: Yes.

2 Q How long was that examination?

3 A That was probably three to four hours.

4 Q Did you have to take courses or otherwise prepare
5 for that examination in advance?

6 A Yes, I did. Very much so.

7 Q Mr. Rosenfeld, you have testified that Edwards
8 & Hanly, one of your duties with Edwards & Hanly concerns
9 compliance. Can you tell the court, does Edwards & Hanly
10 provide you with written procedures concerning compliance?

11 A Yes, there are four different manuals in the
12 branch that I am basically familiar with. There's a form
13 book, there's a registered representative's book, there's
14 a -- on managing and opening accounts, there's a compliance
15 manual on managerial supervision and there's a compliance
16 manual on the cage end of the branch office. Cashier end.

17 Q Mr. Rosenfeld, I show you four volumes, and I
18 ask, are these the manuals (handing).

19 A They are.

20 MR. GORDON: May I have them marked for identification
21 your Honor, and I would like to offer them in evidence.

22 MR. DRAKE: May we see them, your Honor?

23 THE COURT: Of course you can see them. Do you
24 want to look at them now? I think I will leave these marked
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Rosenfeld-cross

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for identification. What is the exhibit number?

THE CLERK: This is Edwards & Hanly Exhibit B, your Honor. Do you want them as one exhibit?

MR. GORDON: A, B, C and D, or, B, C, D and E.

THE COURT: I am not going to look at them. Mark them for identification. You will get a chance to look at them.

MR. PERLIS: May I ask this one question with regard to manuals?

THE COURT: Yes.

MR. PERLIS: Were these manuals as they currently exist also in existence in the same form from October, 1973, to February 22, 1974?

THE WITNESS: Yes.

MR. PERLIS: Have there been any additions or changes made in those manuals since that date?

THE WITNESS: As perhaps a law changed, or a rule changed, yes.

THE COURT: I don't intend to read them all.

(Defendant Edwards & Hanly Exhibits A, B, C and D marked for identification.)

BY MR. GORDON:

Q Mr. Rosenfeld, in connection with the duties which you undertake as resident partner in connection with

1 compliance do you as a regular matter read incoming mail
2 each morning prior to its distribution to the registered
3 representatives?
4

5 A Yes. Anything of a personal nature. Anything.
6 All mail is opened by my secretary, yes.

7 Q What if anything do you do with respect to review
8 of outgoing mail?

9 A I have to initial any outgoing mail before it
10 goes out. Review and initial.

11 Q During the course of a day, Mr. Rosenfeld, do
12 you also walk around the office and speak to the representa-
13 tives?

14 A Yes.

15 Q If the representatives have any problems do you
16 take the problems up with the registered representatives
17 at that time?

18 A Yes.

19 Q What if anything do you do in connection with
20 monitoring customer inquiries and complaints?

21 A A vast majority of complaints don't come to the
22 branch, but when they do come to the branch and if it's
23 something that I feel I can handle I would call the client.
24 see what the problem is, see how it can be resolved.

25 If I can't, there's a form that I must fill out

1 and submit to Hempstead. I retain a copy, the account
2 executive fills out the nature of the complaint, the fact
3 that I reviewed it and what I have to say about it is noted.
4 Copies are sent to Whitehall Street and Hempstead, as a
5 matter of fact.
6

7 Q With respect to discretionary accounts, Mr.
8 Rosenfeld, is there a particular special procedure that
9 you undertake with respect to those accounts?

10 A Yes.

11 Q Would you describe the nature of that procedure
12 for the court?

13 A All discretionary accounts are marked so. I
14 get a special daily production run on them -- I'm sorry,
15 a special monthly production run on the discretionary
16 accounts. All discretionary accounts must be initialed
17 by me before the order is answered on the buy side or
18 the sell side. And certain stock have to fall under specific
19 guidelines.

20 THE COURT: You testified on direct examination
21 about a lot of accounts that had Geon stock. Were they
22 discretionary, or --

23 THE WITNESS: I think a few. A few, your Honor.

24 THE COURT: A few were discretionary, and the others
25 were what?

1
2 THE WITNESS: Solicited or unsolicited orders,
3 but not discretionary accounts.

4 Q Can you explain the term "discretionary," if
5 the court wants an explanation of the term discretionary?

6 THE COURT: I think I know. A discretionary
7 account I take it is an account where the registered repre-
8 sentative makes a determination whether the account is going
9 to buy or sell.

10 THE WITNESS: Yes.

11 THE COURT: And the other he has to get the client's
12 authorization.

13 THE WITNESS: Yes.

14 Q Mr. Rosenfeld, do you also make a periodic review
15 of various computer runs to determine the activity in
16 a particular account or accounts?

17 A Yes, fairly.

18 Q What is the purpose of making this review?

19 A To check to see from a supervisory standpoint
20 to look for excessive trading, churning.

21 THE COURT: Churning?

22 THE WITNESS: Yes, sir.

23 THE COURT: By the way, I don't know what you
24 fellows call them, but do you have customers that buy
25 in the morning and sell in the afternoon?

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Rosenfeld-cross

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manual remain in the Hewlett office?

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A Every account executive has a copy. I have a copy. My associate manager, Mr. Linn, has a copy, and there are probably two or three others in the office.

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Q Can you tell us please, what if anything you do in your supervisory responsibilities to assure that registered representatives under your supervision have read and are familiar with Edwards & Hanly Exhibit C marked for identification?

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A I had classes on this book. When new inserts are to be placed, I review those. I have meetings on them. I have periodic inspections by our compliance department who not only review what I have done, but sit down with the account executives as well to see that everything is in order, everything is in place, and they understand what they are required to do.

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Q Mr. Rosenfeld, when Mr. Rauch came to work for Edwards & Hanly he had already a substantial amount of experience as a registered representative; is that correct?

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24

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A Six to seven years I believe.

Q So that am I correct that he was not required to undergo this New York Stock Exchange trainee and training period prior to becoming a registered representative with Edwards & Hanly?

1 A He had done that already.

2 Q Can you tell the court, please, what if anything
3 you did with respect to training Mr. Rauch in connection
4 with Edwards & Hanly's procedures?
5

6 A Mr. Rauch was given a book, he signed for it.
7 He was instructed to read it and become familiar with it.
8 He attended any of the classes that I had subsequent to
9 that, and he also was monitored at least one time by our
10 compliance department during his period of employment,
11 because they were in my branch.

12 Q When you say "monitored by the compliance
13 department" can you describe for the court the nature of
14 the routine undertaken by the compliance department, what
15 you call "monitoring"?

16 A Well, either Mr. Ray Aaronson or Mr. Stanley
17 Wunderlich or Mr. Henry Behrin came into the branch, I
18 think all three came into the branch, and they sat with the
19 RR's and they questioned them as to their manual and
20 specific rules.

21 THE COURT: This was all 20?

22 THE WITNESS: Yes. Individually.

23 THE COURT: Individually?

24 THE WITNESS: Yes, sir.

25 THE COURT: Separately?

2 THE WITNESS: Yes.

3 THE COURT: How long would they sit with them
4 individually?

5 THE WITNESS: It depended upon, I guess, the
6 response they were getting. Some ten minutes to a half
7 hour, some twenty minutes, so that they were familiar with--

8 THE COURT: When did they do this? After the
9 market closed?

10 THE WITNESS: No, while the market was on.

11 THE COURT: While the market was on?

12 THE WITNESS: Yes.

13 BY MR. GORDON:

14 Q Prior to the time that you engaged Mr. Rauch
15 did you do anything with respect to checking his prior
16 employment references?

17 A Yes, I called up Phillips Appel and Walden.

18 Q Who did you speak to there?

19 A I spoke to two people. I spoke to his branch
20 manager and his compliance director.

21 Q What if anything did they say to you about Mr.
22 Rauch?

23 A They said his record was perfectly clean and
24 they'd love to have him back at any time.

25 Q There has been some testimony regarding this

1 procedure which is called special handling.

2 A Right.

3 Q Can you explain to the court the reason for this
4 procedure and what it is that it is designed to do?

5 A Basically to get better executions. The order
6 is handled, the order is, let's say hand carried, or
7 delivered, or phoned specially in to the specialist on
8 the floor, and is given better handling, and we get
9 better execution for our clients on block.
10

11 THE COURT: What do you do about the special
12 handling? You have got these people, they're buying and
13 selling stock all the time, there isn't any special handling;
14 how do you report that? How do you execute those orders?

15 THE WITNESS: Any orders of size we would give
16 it special handling, your Honor.

17 THE COURT: Automatically?

18 THE WITNESS: Yes.

19 THE COURT: But little fellows like me, what do
20 you do, just let them sit around for a while?

21 THE WITNESS: No. We put them in the regular way,
22 sir.

23 THE COURT: What is the regular way?

24 THE WITNESS: Just teletype it to the floor,
25 which could be handled by a \$2 broker, which could be handled

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2 by -- he left with the floor broker, it could be handled
3 in different ways.

4 THE COURT: You do that by teletype, and if it is
5 special handling you call up a specific fellow and give
6 it to him over the phone?

7 THE WITNESS: Yes.

8 THE COURT: All right.

9 BY MR. GORDON:

10 Q Mr. Rosenfeld, can you explain what the result
11 is on the floor of the exchange as a result of special
12 handling?

13 THE COURT: I am not sure that he is qualified
14 for that. Were you ever on the floor?

15 THE WITNESS: I have visited the floor, yes.

16 THE COURT: I think I will sustain an objection
17 to that.

18 MR. GORDON: Would you mark this for identification,
19 please.

20 (Defendant Edwards & Hanly Exhibit F marked for
21 identification.)

22 BY MR. GORDON:

23 Q Mr. Rosenfeld, I show you Edwards & Hanly
24 Exhibit F marked for identification (handing).

25 THE COURT: Do you fellows object to this?

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MR. DRAKE: No, your Honor, we don't object to it.

THE COURT: All right, it may be received in evidence.

(Defendant Edwards & Hanley Exhibit F received in evidence.)

BY MR. GORDON:

Q Mr. Rosenfeld, I show you Defendant Edwards & Hanly Exhibit F received in evidence, and I ask you if this is the research record which was requested to approve the solicitation of Geon stock (handing).

A Yes.

Q Am I correct, Mr. Rosenfeld, that the second page of this document is the handwritten request for approval?

A Yes.

Q And that Mr. Rauch's signature and your signature appear thereon?

A Yes.

Q There has been some testimony as to whether if a new margin account is opened, what the protection, if any, is for Edwards & Hanly, assuming that there are purchases in the account and that at some subsequent time the papers fail to come in.

Am I correct that all new margin accounts are

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Rosenfeld-cross

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fully secured by a combination of the stock purchased in the account and a \$2,000 minimum in order for the margin account to be continued?

A Yes.

THE COURT: What do you mean by that? What is the \$2,000?

THE WITNESS: The minimum margin maintenance that-- the minimum amount of equity that you can have in an account when you open a margin account is \$2,000.

THE COURT: I told you I would buy a hundred shares of AT&T and I send it in and I sign one of these funny accounts, this type B, was it, and I call up Mr. Rauch and order a hundred shares of AT&T on margin and I don't do anything more, you haven't got \$2,000 from me.

THE WITNESS: You would have to send in \$2,300, assuming the stock is 46, within five business days.

THE COURT I know. Then I think I asked you what happens if I don't, and you said you would sell me out, and I said you would be stuck if the stock went down, and you said, yes.

THE WITNESS: The account executive would be stuck.

Q Am I correct, Mr. Rosenfeld, that on all new accounts the registered representative bears the full burden of any default on any initial trade?

b86

1 A Yes, margin or cash.

2 Q Mr. Rosenthal, can you tell the court, is the
3 spot checking which is done of new account agreements, is
4 that done for the purpose of seeing that the registered
5 representative has correctly gotten the information which
6 he has put on the new account card?
7

8 A Yes.

9 Q Mr. Rosenthal, SEC Exhibit 18 in evidence,
10 the new account card of James McMahon, does that bear the
11 signature of Mr. Rauch (handing)?

12 A Yes.

13 Q Does it on the back also bear checkmarks, branch
14 office obtaining, with respect to the margin agreement,
15 and customer's loan consent?

16 A Yes, it does.

17 Q Can you tell the court in the manner in which
18 Edwards & Hanly conducts its business is the signature on
19 this card with these checks on the back considered a written
20 representation by the representative that he is in fact
21 obtaining these papers?

22 A Yes, it is.

23 MR. PERLIS: Objection, your Honor.

24 THE COURT: I think I understand. I will let
25 him answer that.

1
2 Q At the time that the new account was opened
3 for Mr. McMahon were there a number of other accounts which
4 were opened at or about that time by Mr. Rauch?

5 A Yes, there was.

6 Q Do you recall approximately how many were opened
7 at about that time?

8 A Considerable.

9 THE COURT: What do you mean by that? These
10 are accounts he brought over from his former employer;
11 is that right?

12 THE WITNESS: Yes.

13 THE COURT: How many were there, if you recall?

14 THE WITNESS: Initially maybe a hundred, 75.

15 Q Do you recall, Mr. Rosenfeld, observing Mr.
16 Rauch and his wife in Edwards & Hanly's office with the
17 Loeb Rhoades forms physically taking Edwards & Hanly's forms
18 and writing out the new account cards at one time?

19 A Yes, with his secretary, his former secretary
20 aswell.

21 Q So that it would be a correct statement, sir,
22 that there was a single period of time when all of these
23 new accounts were physically written up and handed to you
24 for signature?

25 A Yes, there was.

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2 Q Did you at that time do spot checking with
3 respect to some of these accounts?

4 A Yes, we did.

5 Q Can you tell the court, please, as a general
6 matter, what, if anything, did Mr. Rauch tell you in respect
7 to his contacts with Geon Industries?

8 A Will you repeat that, please?

9 (Question read.)

10 A Very simply that he had spoken to the company,
11 and very little more. Normal public relations.

12 Q Did Mr. Rauch tell you what if anything the
13 company had said to him?

14 A Things were going well, that business was good.
15 This type.

16 Q Did you ever have occasion when Mr. Rauch told
17 you that he had obtained any specific information from
18 the company?

19 A No.

20 Q There has been some testimony as to the fact
21 that Edwards & Hanly has a policy which requires approval
22 prior to a registered representative contacting a public
23 company.

24 Is there a reason why Edwards & Hanley does not
25 absolutely prohibit a registered representative from

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Rosenfeld-cross

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contacting a public company when he is holding or trading
the stock?

MR. PERLIS: Objection, your Honor.

THE COURT: I think I will sustain the objection.

Q Did there come a time on February 22nd when
you had one or more conversations with Martin Rauch concern-
ing the nature of the events which were transpiring on that
day?

A I had one or more conversations with Mr. Rauch,
yes.

Q Can you tell the court when for the first time
did you talk to Marvin Rauch about the events on the 22nd?

A As they were actually occurring.

Q Did you have a conversation with Mr. Rauch after
the opening had been delayed?

A Yes.

Q What if anything did Mr. Rauch say as to his
knowledge of the reasons for the delayed opening?

A He was surprised that the opening was down, and
I think somewhat concerned.

Q Did Mr. Rauch say to you that he knew the reason
for the delayed opening?

A No, he didn't.

Q Did you have a conversation --

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Rosenfeld-cross

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THE COURT: He put an order to sell a little before that; is that right?

THE WITNESS: Prior to the opening, yes, your Honor.

THE COURT: And he was concerned because he put in an order to sell and the stock wasn't open?

THE WITNESS: Yes.

Q Did you have a conversation with Mr. Rauch after trading started with respect to the way in which trading was going?

A Yes. I told him I didn't like the action of the stock, I didn't like the opening, and I was concerned with it. As simple as that. I thought something was wrong.

Q What if anything did Mr. Rauch say?

A Not much. He seemed a little bit concerned. He was on the phone. Then he gave me that additional 1,200 shares when I was phoning my 800 shares in, and then I had a conversation with him regarding Mr. Boesky, and then the stock stopped trading a little after 11 o'clock and everybody was concerned. He had a substantial amount of stock left.

Q Did Mr. Rauch during the period when trading was going say anything to you about the fact that he knew the reason for trading going in the way it was?

2 A No.

3 THE COURT: Why don't you be more specific?

4 Did Rauch ever tell you that he knew there had
5 been a directors' meeting the day before to approve the
6 Burmah deal?

7 THE WITNESS: No, your Honor, he didn't.

8 THE COURT: Did you ever hear it from any other
9 source?

10 THE WITNESS: No, sir.

11 THE COURT: Until after all this blew up?

12 THE WITNESS: After all this.

13 BY MR. GORDON:

14 Q Did you, during the course of these conversations
15 with Mr. Rauch, ask him whether he knew anything about
16 the situation?

17 A I'm sorry, what was that again?

18 (Question read.)

19 THE COURT: Why don't you reframe the question?
20 It was an awfully long question.21 Q Did you, Mr. Rosenfeld, ask Mr. Rauch during
22 the course of the trading period whether he knew why trading
23 was going in the way it was?

24 A No. He made a-- quite obviously he knew nothing.

25 THE COURT: He appeared to.

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2 THE WITNESS: Yes, sir.

3 THE COURT: He had an order to sell and it hadn't
4 been executed, and he didn't know how much he was going to
5 get.

6 THE WITNESS: Number 1. And he had a substantial
7 amount of stock left himself.

8 Q Mr. Rosenfeld, there has been some confusion
9 as to the procedures used in the Hewlett office for
10 obtaining extensions of time in margin accounts.

11 Can you explain to the court the procedures which
12 are in fact used to obtain extensions?

13 A On the day that moneys would be due five days
14 for margin account, seven days for a cash account, we are
15 informed by our back office that the moneys have not yet
16 arrived. My secretary would notify the account executive.
17 He, in turn, would call the account. Basically there are two
18 reasons why we would apply for extension. Either we could
19 not locate the account, could not reach him, or the client
20 would say the check was in the mail. And they would give
21 me the specific reason that they may be requiring an ex-
22 tension, they may have required an extension, and I would
23 reply or ask the back office to grant an extension.

24 Extension is granted by the Federal Reserve Board,
25 I believe.

1 THE COURT: Do you send out a notice?

2 THE WITNESS: We notify our clients.

3 THE COURT: Who does?

4 THE WITNESS: The account executive. It's not
5 a physical piece of paper going out saying that \$2200
6 is necessary --

7 THE COURT: You don't send that?

8 THE WITNESS: No. They get confirmations, your
9 Honor, which might not be enough in certain margin trans-
10 actions, so about two days prior to the-- that the money
11 is due, the back office notifies us exactly how much is
12 necessary. We then get in touch with the client. Then on
13 the last day we get in touch with them again, if it's not
14 in.

15 THE COURT: So what the back office does is send
16 out a confirmation that you owe so much?

17 THE WITNESS: Yes, sir.

18 MR. GORDON: May I have this document marked for
19 identification, please?

20 (Defendant Edwards & Hanly Exhibit G marked for
21 identification.)

22 MR. GORDON: Your Honor, I would like the Securities
23 and Exchange Commission to stipulate to the admission of
24 this document in evidence.
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Rosenfeld-cross

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THE COURT: Let them look at it.

MR. PERLIS: Your Honor, we cannot stipulate to this document. We have not seen it before. We have no way of checking this.

THE COURT: Let me take a look at it.

MR. PERLIS: It's a high-low chart for weeks, your Honor, in Geon stock. It doesn't show the open or close or any particular day.

THE COURT: I will receive this exhibit, and if you find that these figures are wrong, let me know and file your own. This is public information, isn't it?

MR. DRAKE: Your Honor, I think our concern was the fact that it doesn't show opening and closing prices.

THE COURT: Well, you can show opening and closing prices if you want to.

(Defendant Edwards & Hanley Exhibit G received in evidence.)

BY MR. GORDON:

Q Mr. Rosenfeld, I show you Edwards & Hanly Exhibit G received in evidence, and I ask you whether or not with this document in front of you can you tell the court approximately when the red light period was put on your purchases of Geon stock (handing).

A Well, the week ending November 16th. Probably

1
2 from here I would say most likely the 19th of November.
3 Probably the Monday.

4 Q Mr. Rosenfeld, did there come a time when Mr.
5 Marvin Rauch was suspended in his employment with Edwards
6 & Hanly?

7 A Yes, sir.

8 Q When was that, sir?

9 A I believe March 1st.

10 Q 1974?

11 A 1974. I'm sorry.

12 Q Can you tell the court the circumstances under
13 which -- did you suspend Mr. Rauch?

14 A Edwards & Hanly did, yes.

15 Q With your knowledge in advance?

16 A My approval, yes.

17 Q And your approval?

18 A Yes.

19 Q Can you tell the court the reason why Mr. Rauch
20 was suspended at that time?

21 A Based upon his testimony at the American Stock
22 Exchange.

23 Q Did there come a time when Mr. Rauch was terminated?

24 A Yes.

25 Q Approximately when was that?

1 A I believe that was right after he was charged
2
3 by the Securities and Exchange Commission, formally charged.

4 THE COURT: Do you know when that was?

5 THE WITNESS: I don't know the exact date, your
6 Honor.

7 THE COURT: Can you supply that date?

8 MR. DRAKE: I think the complaint was filed
9 approximately April 2nd.

10 THE COURT: So it would be around there.

11 THE WITNESS: Approximateoy.

12 THE COURT: All right.

13 MR. GORDON: If your Honor please, I would like
14 to have these marked for identification.

15 (Defendant Edwards & Hanly Exhibits H and I marked
16 for identification.)

17 BY MR. GORDON:

18 Q Mr. Rosenfeld, I show you Edwards & Hanley
19 Exhibits H and I marked for identification, and I ask you
20 if you can identify these documents (handing).

21 A Yes.

22 Q What are they, sir?

23 A That is part of the RE-1 forms that we submit
24 to the exchange for employees, for registered representatives.

25 Q Mr. Rosenfeld, are these the notice of suspension

1 and notice of termination of Mr. Rauch?

2 A Oh, I'm sorry. I thought these were RE-1 forms.
3 Yes, exactly. I'm sorry.
4

5 MR. GORDON: I offer them in evidence.

6 MR. DRAKE: No objection.

7 MR. STRUM: I would like to see them for a
8 moment, if I may.

9 THE COURT: All right, we will receive them
10 subject to your complaint.

11 MR. STRUM: I have no objection, your Honor.

12 (Defendant Edwards & Hanly Exhibits H and I
13 received in evidence.)

14 BY MR. GORDON:

15 Q Mr. Rosenfeld, in connection with the placing
16 of the order by Mr. Rauch on the morning of the 22nd, the
17 1,500 shares, at the time that Mr. Rauch placed that order,
18 can you tell the court whether the fact that Mr. Rauch
19 was selling 1,500 shares appeared unusual to you?

20 A No, it did not.

21 Q Can you tell the court the reason why if any
22 it did not?

23 THE COURT: Well, I don't care about the reason.
24 I take it then that your registered representatives out
25 there in Long Island often come in and say, 'I'm going to

1
2 sell some stock?

3 THE WITNESS: Yes, sir.

4 THE COURT: That is quite common?

5 THE WITNESS: Yes, sir.

6 THE COURT: That is the reason it is not unusual.

7 THE WITNESS: Not at all.

8 THE COURT: All right.

9 BY MR. GORDON:

10 Q Am I correct also, Mr. Rosenfeld, that at that
11 time Mr. Rauch held over 60,000 shares of Geon stock?

12 A Yes, 60,000 plus.

13 Q So he would be substantially less than 3 per cent,
14 2 per cent of his position?

15 A Yes, sir.

16 Q With respect to your personal purchases and sales
17 in Geon stock, I believe you testified that you purchased
18 some shares in October; is that correct?

19 A I think November.

20 Q November?

21 A November 2nd, 3rd.

22 Q Did you sell any shares of Geon stock in November?

23 A I think I sold some in December and a few shares
24 in January.

25 Q With respect to not only your account, but your

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Rosenfeld-cross

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customer accounts, were you buying and selling, not alternately, but back and forth?

A Yes.

Q What about the --

THE COURT: You were selling during the red light period when you received this word, "Look out"?

THE WITNESS: I stopped buying during the red light period and sold shortly thereafter, yes, sir.

THE COURT: All right.

Q Mr. Rosenfeld, with respect to the sales of yours and your customers' accounts, did you sell any such shares on or about the day that the release was issued by the negotiations with Burmah?

A Did I sell on December 3rd?

Q On or about that date.

A No.

Q With respect to Mr. Rauch's purchases and sales of Geon stock did Mr. Rauch in the period from October until February 19th sell shares of Geon as well as purchase them?

A Yes.

Q Do you have any recollection at this point of any specific sales or sales of Geon stock during that period?

A Yes.

Q Can you tell the court what your recollection is?

1
2 A Yes. He sold 2,000 shares for a Norman Mazlow,
3 I think in January. Maybe early February. I'm not quite
4 sure. I know he sold 600 shares to meet a maintenance call
5 one particular time. There were sales. I definitely
6 remember 2,000 shares, because I think I gave that special
7 handling as well.

8 MR. GORDON: No further questions.

9 THE COURT: Are there any other questions?

10 MR. PERLIS: Yes, your Honor, briefly.

11 THE COURT: All right.

12 MR. STRUM: I have no questions, your Honor.

13 THE COURT: Oh, I beg your pardon. Thank you
14 for telling me you don't have any questions. Thank you
15 very much.

16 REDIRECT EXAMINATION

17 BY MR. PERLIS:

18 Q Mr. Rosenfeld, first with respect to the sale
19 for Mr. Mazlow in January, that you testified was 2,000 shares.
20 I will show you SEC Exhibit No. 17 which purports to be
21 a list of purchases and sales by representatives in the
22 Hewlett office, and I call your attention to January 23rd
23 (handing).

24 Do you see a sale there reflected for Mr. Mazlow?

25 A There is 200, but I believe that's wrong. I think

1 it was considerably more than that.

2 Q With respect to Edwards & Hanly Exhibit F,
3 which purports to be the form you used for obtaining
4 research approval for solicitation of Geon; is that correct?
5

6 A Yes.

7 Q Was the report backing it attached at the time
8 that was submitted?

9 A Should be, yes. He gave me a lot of things to
10 submit with it, yes.

11 Q I believe it was your prior testimony that you
12 had received oral permission after submitting this document,
13 you had received oral permission to solicit on or about
14 the time of Mr. Rauch's employment.

15 A Approximately, yes.

16 Q And you had received written permission approxi-
17 mately the week after?

18 A I believe so. Ten days, yes.

19 Q I will show you the last page of the report
20 that you submitted, along with the request for solicitation,
21 and ask if that is dated (handing).

22 A Yes. October 12, 1973.

23 Q Is that October 17, 1973?

24 A 17th, I'm sorry.

25 Q Isn't this the Cohenen report that you spoke of

1 before?

2 A Might be. I can't see it, you pulled it away.

3 Q I'm sorry (handing).

4 A Yes.

5 Q Didn't you testify on direct examination that
6 you did not receive that report until the end of October?

7 A Early October. Oh, I'm sorry, you're right,
8 late October, early November.

9 Q What is the date on the formal written approval
10 for solicitation?

11 A November 1, 1973.

12 Q I believe you testified earlier that Mr. Rauch
13 was hired in August, August 22, 1973.

14 A Yes. I don't even go by my log, I have it in my
15 log.

16 Q I believe you also testified that Mr. Rauch was
17 suspended from his employment at some point after February 22,
18 1974.

19 A Yes.

20 Q Did he continue to receive his pay from Edwards &
21 Hanly during that suspension period?

22 A No.

23 Q Prior to his termination on or about April 2, 1974,
24 was he ever reinstated for any period with Edwards & Hanly?
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Rosenfeld-redirect

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A I think for five or six days, five or six business days perhaps. Right near the end of March. A week maybe.

Q So he did return to his job?

A Five or six days, yes.

Q With respect once again to margin extensions, I will show you again SEC Exhibit No. 17 which reflects the purchases and sales of Geon Securities, and ask if on November 2nd you see a purchase of 200 shares in the Maione account (handing)?

A Yes.

Q I believe you testified before that this was a margin account?

b88 A Yes.

Q On November 9th was to your knowledge an extension of payment, an extension of time for payment granted in the Maione account?

A Yes.

Q To your knowledge, again referring to that sheet if you need to, did Mr. Maione also purchase an additional shares on November 9th of Geon?

A Yes.

Q Does Edwards & Hanly have any procedures about granting extensions in margin accounts and permitting customers to purchase on the same day when extensions are

1 granted?

2 A Do we have any -- I'm sorry, will you repeat
3 that, please?

4 THE COURT: He wants to know were there any
5 procedures where the customer hasn't paid up on his margin
6 and he buys some more, he got an extension and then buys
7 some more stock at the same time.

8 THE WITNESS: I would think it might be a little
9 irregular, but it would be dependent upon what the account
10 executive said to me, where the money is, the check is in
11 the mail, I am picking the check up this evening, I am
12 going out to get it right now.

13 Q Do you recollect what was said to you?

14 A No, I really don't, but I can see where it can
15 happen.

16 Q Did Mr. Maione have any other securities in his
17 account other than Geon?

18 A No, I don't believe so.

19 Q At the time he made his purchases was there any
20 other equity in Mr. Maione's account? Had he put in any
21 money when the account was opened?

22 A I don't believe so.

23 MR. PERLIS: No further questions.

24 THE COURT: All right.

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Lynn-direct

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Are there any other questions?

MR. GORDON: No, no questions, your Honor.

MR. STRUM: I still have no questions, your Honor.

THE COURT: Thank you, you are excused.

(Witness excused.)

MR. RUBIN: Your Honor, my name is Richard Rubin.

The SEC calls David Lynn.

D A V I D L Y N N, called as a witness in behalf of the
plaintiff, being first duly sworn, testified as
follows:

DIRECT EXAMINATION

BY MR. RUBIN:

Q Sir, would you please state your name?

A My name is David Lynn, L-y-n-n.

Q Your home address, please?

A 360 Central Avenue, Lawrence, New York.

Q Mr. Lynn, could you state when you were hired
by Edwards & Hanly?

A I was hired in December of 1967.

Q In what capacity were you hired?

A At that time as a trainee.

Q A trainee to be --

THE COURT: Where at Edwards & Hanly were you hired?

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2 THE WITNESS: In New York. In this training
3 program.

4 THE COURT: Here in New York?

5 THE WITNESS: Right.

6 THE COURT: All right.

7 Q Were you hired for the Hewlett office?

8 A Yes, I was.

9 Q When did you become a registered representative?

10 A July 1, 1968.

11 Q What is your present position at Edwards & Hanly?

12 A I'm the associate manager of the Hewlett branch.

13 Q When did you assume that position?

14 A I assumed that position, I believe, in November,
15 1971.

16 Q Are you a limited partner of Edwards & Hanly?

17 A Yes, I am.

18 Q When did you become a limited partner?

19 A I believe it was March of either '71 or '72,
20 I'm not sure.

21 THE COURT: Well, you are associate manager of the
22 office, and being a limited partner really you are an
23 investor, you put up some capital; is that right?

24 THE WITNESS: Yes, I did.

25 THE COURT: On which you have a deal that you are

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Lynn-direct

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supposed to get a return on?

THE WITNESS: Yes. Exactly.

THE COURT: But otherwise that's all a limited partner is.

THE WITNESS: No, I have no other responsibilities other than just a cash investment.

BY MR. RUBIN:

Q What are your responsibilities as an associate manager?

A Well, I supervise the registered reps, I give them sales ideas, take on the responsibilities of a manager in the absence of Mr. Rosenfeld.

Basically I guess I'm his right hand man. Plus, again, helping with the RR's in the office.

Q Do you, or did you prior to April 2, 1974, supervise Mr. Rauch?

A Yes, as one of the representatives in the office. Yes.

Q Where do you sit in relation to Mr. Rauch, or, where did you sit?

A I sat directly behind him.

Q Were there any dividers or partitions between your desk and Mr. Rauch's desk?

A No.

1 Q About how many feet would you say approximate
2
3 the distance between your desk and Mr. Rauch's desk?

4 A The length of a desk.

5 THE COURT: We have all this. I have a perfect
6 picture of this happy family here. The customers sit behind
7 you.

8 THE WITNESS: Well, they have a section for the
9 customers.

10 THE COURT: Yes.

11 Q Mr. Lynn, when you were hired, were you informed
12 of any Edwards & Hanly procedures concerning contacts
13 between representatives and officers and directors of public
14 companies?

15 A Well, as part of the training program I believe
16 there was some mention made of it, if you wanted to speak
17 to a company or something you would have to go clear through
18 the manager, or something like that, but I don't remember
19 specifically at the very beginning. I know subsequent to
20 that there was.

21 Q Were they written? Was it a written procedure,
22 if you recall?

23 A No, I don't recall.

24 Q What procedures, also when you were hired, did
25 Edwards & Hanly have concerning the completion of new account

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2 cards?

3 A Well, they had a form which had to be completed,
4 but which they gave you to complete, but that form subse-
5 quently had been revised and it's more comprehensive each
6 year as it's gone on.

7 Q Who can authorize the opening of a new account?

8 A Well, the branch manager or the associate manager
9 will sign, and it's also approved in the back office after
10 our approval.

11 Q As associate manager do you verify any data
12 on new account cards?

13 A Yes, occasionally. But sometimes I will delegate
14 that responsibility, since it is administrative, to my
15 secretary.

16 Q Do you rely on the data supply by the representative
17 that it is completed on the card?

18 A Well, to be honest, the rep --

19 THE COURT: Do be honest.

20 THE WITNESS: I'm sorry.

21 THE COURT: Don't pick out any particular time,
22 just do that all the time.

23 A (Continuing) The registered representative
24 at Edwards & Hanly is supposed to be a trustworthy individual,
25 and he is making certain statements to us by his signature

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Lynn-direct

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on that card that he has complied with all the rules and regulations in obtaining all of the necessary information on that account card.

Therefore his signature on there is for us to rely that he wants this account opened.

Q What procedures do you use to monitor the trustworthiness, let's say, of a rep?

MR. GORDON: Your Honor, I don't understand that question entirely.

THE COURT: Well, I think I understand the objection to the form, but I will ask him, do you have any procedures to determine whether fellows you hire as reps, as you call them, are honest? How do you find that out?

THE WITNESS: Just from the experience that we have with them. I don't do the hiring.

THE COURT: You don't do the hiring, so you don't know that.

THE WITNESS: No.

THE COURT: Have you ever had to check a rep, did Mr. Rosenfeld ever ask you, I want to get a check on this rep? Did he ever do that?

THE WITNESS: Well, Mr. Rosenfeld has asked me to speak to a rep after he has interviewed him for possible employment, but other than that I didn't do any

1 searches per se.

2 THE COURT: You didn't check his background?

3 THE WITNESS: No. That's not done through myself.

4 THE COURT: To find out if he beats his wife
5 and things like this.

6 THE WITNESS: No, not at all.

7 THE COURT: You never do that?

8 THE WITNESS: No.

9 THE COURT: All right.

10 BY MR. RUBIN:

11 Q Do you depend on a rep for his honesty and
12 trustworthiness and for his own compliance with the Edwards
13 & Hanly rules?

14 MR. GORDON: Objection again, your Honor.

15 THE COURT: I think I will sustain the objection
16 to that. I think that is self-serving any way he answers
17 that.

18 Q Mr. Lynn, upon the opening of a margin account
19 do you require that margin agreements be signed before
20 any trades are made?

21 A No.

22 Q How soon after the trade may be made do you
23 expect a margin agreement to be signed?

24 A Within a reasonable time.

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Lynn-direct

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Q A week? Two weeks? A month?

MR. GORDON: Your Honor, he has testified as to a reasonable time.

THE COURT: Well, that is a very elastic term. What is a reasonable time?

THE WITNESS: Well, all right. What we do is upon the opening of an account if the clients is not physically present to sign a physical margin agreement, then what the rep will do is the moment he opens the account on that day at some point we will send out a margin agreement for the customer's signature.

When the customer responds is not under the control of the rep. He constantly calls them, but a reasonable time as soon as it gets into the mail.

Q A week or two weeks or three weeks would be a reasonable time?

A I would usually say if they try to get it in before. But, that's reasonable.

Q As associate manager can you approve the extension of time to pay for a stock purchase?

A I haven't, no.

THE COURT: I think the question is, do you have authority to.

THE WITNESS: Well, not -- I don't know.

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THE COURT: You don't know. You have never done it?

THE WITNESS: I have never done it. Extensions of time I believe are granted by the New York Stock Exchange, and it's just that we will request an extension of time from them, but it's the manager of the office who gets all extensions from the secretary.

Q Did I understand you to say though that you have not done that?

A I have never granted an extension of time.

Q Do you know if extensions of time are granted without receiving signed margin agreements in accounts?

THE COURT: Well, he has never done it. I think I will sustain the objection to that.

Q Mr. Lynn, I would like to show you SEC Exhibit 19 which is the new account card of Mr. Louis Maione (handing).

Have you seen that document before, Mr. Lynn?

A Excuse me?

Q Have you seen that document before?

A Yes.

Q Is that your signature in the lower right-hand corner of the front side of the card?

A Yes, it is.

Q Can you tell me whose handwriting is two blanks above that, initial disclosure statement, beginning at date

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and amount of interest, annual interest?

A No, I cannot.

Q Do you know if you filled that out?

A No, I did not. It's not my handwriting.

Q Do you know who routinely would fill that out?

MR. GORDON: Your Honor, he has testified that
he doesn't know.

THE COURT: Well, he can answer if he knows whose
job it is to fill that out.

A I would imagine it's the function of the back
office.

Q When this account was opened, Mr. Lynn, did you
spot check any of the data on the account?

A Did I spot check on this one specifically?

Q Yes.

A I couldn't tell you. We do it randomly, and I
don't know whether this one was or wasn't.

THE COURT: Do you put a little "x" somewhere
if you spot check it?

A Well, no. I think -- I don't know what my
secretary does.

THE COURT: You don't put anything?

THE WITNESS: No.

Q Your secretary would know this as opposed to you

generally?

A If there was a spot check she would do it, and I don't know specifically what her code would be.

Q Mr. Lynn, do you know as of this moment whether there are any inaccuracies on that card?

A Any inaccuracies?

Q Yes.

A No.

Q At the time that account was opened did you know any relationship between Mr. Maione and any of Mr. Rauch's other customers?

A No.

Q Mr. Lynn, did you know at the time Mr. Rauch was employed by Edwards & Hanly that he had a significant position in Geon, in both his own and his customers' accounts?

A At some time during his employment I did know.

Q Would it be contemporaneous with his employment while he was being interviewed?

THE COURT: Look, that's an awfully long winded question.

When did you find out he had a position--

THE WITNESS: I knew he had a position when he had come over, shortly after he had come over. I knew he had a position. The extent I did not learn, the full extent,

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2 until some time later in his employment.

3 Q Did you ever own any Geon in your own account
4 or in the accounts of your customers prior to Mr. Rauch's
5 employment of Edwards & Hanly?

6 A Yes.

7 Q Can you tell me when your first purchase was?

8 A I believe when it came out as a secondary issue
9 in about 1972, in 1971. There was a secondary, I believe,
10 \$20, and I believe I got either 50 shares or something like
11 that on the secondary offering.

12 Q Was that for your own account?

13 A No.

14 Q Did you hold any for your own account prior to
15 Mr. Rauch's employment?

16 A None.

17 Q Did you ever contact Edwards & Hanly's research
18 department for information on Geon prior to Mr. Rauch's
19 employment?

20 A Their research department?

21 THE COURT: Your research department.

22 A No, I had no reason to. I wasn't buying the stock.

23 Q Was the 50-share purchase your only purchase of
24 Geon prior to Mr. Rauch's employment?

25 A I believe that was the only purchase.

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2 Q Did you ever discuss Geon with Mr. Rauch after
3 his employment by Edwards & Hanly?

4 A Absolutely.

5 Q Did you discuss Geon frequently with Mr. Rauch?

6 A When you say "frequently," in terms of what,
7 the company or tape action?

8 Q Company or tape action.

9 THE COURT: No, I think that -- did you have
10 a continuing course of conversation with Rauch about Geon?
11 Was this sort of a daily thing you talked about Geon?

12 THE WITNESS: During the course of a week we
13 would have a conversation, it was more so in the months
14 of January and February than prior to that. But there were
15 discussions, you know, obviously weekly.

16 Q Did you consider Mr. Rauch the man in the office
17 to speak to if you had some questions about Geon, or a
18 question about tape action?

19 A Did I for the office or myself personally?

20 Q For yourself personally.

21 A If I wanted to know something about Geon I would
22 speak to Mr. Rauch, because he had an extensive file of
23 material on the company. Something I had never seen before.
24 I didn't believe there was that information published
25 by a company.

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Q When did you first buy Geon for your own account?

A For my own account?

Q Yes.

A I believe it was the early part of November.

THE COURT: How much did you buy?

THE WITNESS: I bought for myself. I believe it was 400 shares.

THE COURT: How did you happen to do that?

THE WITNESS: I was in receipt of a Coenen report, a company report. The name of the company was Coenen, on Geon Industries, and I was pressed.

THE COURT: Did you talk to anybody in Edwards & Hanly about that?

THE WITNESS: I spoke -- well, I spoke to Mr. Rauch because I believe he was the one who gave me the report, and he asked me to read it and asked what I thought of it.

Q When do you recall Mr. Rauch giving you the Coenen report?

A Just shortly, I guess, before I had made any purchases.

Q Do you recall purchasing Geon for your own account on November 2nd?

A I believe that was the date.

Q Do you know if Mr. Rosenfeld also purchased the

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same number of shares for his own account on November 2nd?

A I believe he purchased it at the same time that I did.

Q Do you know that Mr. Rauch also purchased 600 shares for his own account on November 2nd?

A Well, as I said, we were in receipt of the Coenen report and I imagin he purchased on that day also.

Q Did you discuss your purchases before you all entered orders?

A I really don't recall.

THE COURT: I think he has testified that he had this, what did you call that report?

THE WITNESS: I call it Coenen. I don't know if I'm pronouncing it rightly. C-o-e-n-e-n.

THE COURT: That's good enough. And you had that report and you had been talking to Rauch about it?

THE WITNESS: Well, he's the one who gave it to me for my viewing.

THE COURT: Sure. So you undoubtedly talked to him about it.

THE WITNESS: Sure, we had discussions.

THE COURT: I mean at the time you purchased.

THE WITNESS: Yes.

THE COURT: You undoubtedly did. Did you talk

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Lynn-direct

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2 to Rosenfeld too?

3 THE WITNESS: Yes. At the time, sure.

4 BY MR. RUBIN:

5 Q Mr. Lynn, did you purchase shares on behalf of
6 your father on November 12, 1973?

7 A I believe I purchased 200 or 100, something like
8 that, on that day.

9 Q Do you know if Mr. Rauch also purchased shares
10 for his own account and his family's account on November 12th?

11 A No, I do not know the extent of his purchases.

12 Q Did you purchase shares for your father on
13 November 16th?

14 A That must have been the balance, because my father
15 had 300 shares, total, so on one day I purchased a hundred,
16 the other day 200, and I don't know which one it was.

17 Q Did Mr. Rauch also purchase Geon on November 16th?

18 A I have no knowledge that he purchased on those
19 dates for himself.

20 Q Mr. Lynn, do you know if Mr. Rauch had any contact
21 at Geon Industries, anyone he spoke to?

22 A Well, I know now that he had spoken to--

23 THE COURT: No, not what you know now. Did you
24 know during this period that you were buying stock whether
25 he had any contact?

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Lynn-direct

745

THE WITNESS: I know he called the company once or twice that I had known of. But I think if I'm not mistaken, I believe he spoke to a Mr. Neuwirth, he said. But I didn't know what that meant, whether that was public relations or what.

Q Do you know if Mr. Rauch spoke to Mr. Bloom at Geon Industries? Is that familiar?

A I don't know the name Bloom at all, other than my mother's maiden name.

Q No relation, I assume.

THE COURT: Did anybody tell you that Geon meant George Neuwirth?

THE WITNESS: I do know it now, but I didn't know specifically at that point that it meant George Neuwirth.

Q Did you hear Mr. Rauch conversing with anyone at Geon Industries to your knowledge?

A I have never heard a physical conversation, no.

Q You did not know that Mr. Neuwirth was the chairman of Geon; is that your statement?

THE COURT: No, he didn't say that. You didn't ask him that. He didn't know. All he said was he didn't know that Geon was a combination of George and Neuwirth, that's all he said.

Did you know that George Neuwirth was chairman

1
2 of the board?

3 THE WITNESS: At that time, no, but then I
4 learned subsequently that after.

5 Q Prior to February 22, 1974?

6 A Yes.

7 Q Did you ever speak to anyone at Geon Industries?

8 A Did I?

9 Q Yes.

10 THE COURT: Well, let's have a time frame. During
11 this period when Rauch was working.

12 Q From October, 1973--

13 A I'll answer I never spoke to anybody at Geon.

14 THE COURT: All right.

15 Q Did you ever discuss with Rauch clearing or
16 getting authorization for his calls to Geon or any other
17 company?

18 A Did I ever speak to him?

19 Q Yes.

20 A No, I know he would speak to Mr. Rosenfeld before
21 he called, usually, on the one or two times that I knew that
22 he spoke to somebody, that I knew he would speak to Mr.
23 Rosenfeld.

24 Q Mr. Lynn, did there come a time when Edwards &
25 Hanly issued a directive concerning Geon purchases?

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Lynn-direct

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A Well, the word "directive" confuses me a little because -- is it a written or verbal?

Q I would like to ask you that.

A I knew of some kind of verbal directive. I never saw a written directive.

Q When did you become aware of the existence of the directive?

A Probably the middle to the end of November.

Q Were you aware of any warning, directive, prior to the middle or the end of November?

A A warning prior? No.

Q Do you know who issued the directive?

THE COURT: You never heard any instruction from anybody in Edwards & Hanly that said, be careful about Geon?

THE WITNESS: I had no direct --

THE COURT: You wouldn't have that --

THE WITNESS: But it was given to me. When I would have a discussion with Mr. Rosenfeld.

THE COURT: Just whatever you got would be from Rosenfeld?

THE WITNESS: That's right. That's why I say, was it verbal or written. I never saw a written one.

Q Were you aware prior to the middle or end of November of a warning or guideline on Geon?

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A Yes.

Q Prior to the middle or end of November?

A Oh, no. I thought you said at the end of November. No. Middle of November to the end of November, some time in that period is when I first became aware of it.

Q That is your first knowledge now?

A Of a verbal directive of some kind.

Q Did you solicit purchase orders in Geon securities in the customers' accounts during October 23rd and 25th?

A I solicited a few, yes. It wasn't very much, but it was a few.

Q Close to a thousand shares total? I can furnish you a list, SEC Exhibit No. 17 perhaps will refresh your recollection (handing).

A Fine. These have my clients, right.

Q During October 23rd and 25th, 1973, did Mr. Rosenfeld discuss Geon purchases with you at all?

A I'm sorry, the date, October 23rd and what other date?

Q And the 25th.

A Did he discuss it with me?

Q Yes.

A No. Not to my recollection.

THE COURT: I think we will take a short recess.

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Lynn-direct

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gentlemen.

(Recess)

THE COURT: Proceed, Mr. Rubin.

BY MR. RUBIN:

Q Mr. Lynn, what was the substance of the directive concerning Geon purchases?

A The verbal conversation that I had with Mr. Rosenfeld was basically that they sort of put on a caution light on the purchases of the stock in margin accounts that on concentration our position was getting extremely large, and that we would like to not have extensions or whatever, but it was just a caution signal.

Q Were your purchases on margin?

A Mine personally? Yes.

Q Did you solicit purchases in your customers' accounts in Geon after being informed of the directive by Mr. Rosenfeld?

A Yes.

Q Did you personally have any responsibility for enforcing the directive?

THE COURT: Well, I don't know what you mean by "enforcing a directive." Did you pass on this warning to others in the shop?

THE WITNESS: Yes. Well, the only one who had

any stock was Marvin. I don't think -- maybe one or two other fellows, if that, had any stock, and I passed it on to Marvin specifically.

THE COURT: You didn't tell these registered representatives of whom I guess there were 20 at the time, we have got a warning on this, look out about --

THE WITNESS: No, because they didn't have any interest in the stock.

THE COURT: They had no interest in it?

THE WITNESS: None at all.

THE COURT: All right.

Q What did Mr. Rauch say when you passed on the warning, or directive?

A I don't recall the specific conversation. He was just made aware of it on various occasions. Not specifically, in other words, if he went to buy a great deal of stock he would be, you know, before he did it if it was a new account we would just tell him, well, is it suitable, etc., for the account, and that was it. And, you know the requirements, that we just would like to watch.

Q You know then that he did continue to buy Geon heavily after he was informed of the directive?

THE COURT: Do you know?

Q Continued to buy--

2 THE COURT: I don't know what "heavily" is.
3 Did he continue to buy after this warning?

4 THE WITNESS: Yes, he did.

5 Q Did Mr. Rosenfeld tell you any reasons for the
6 directive?

7 THE COURT: Well, I think he just told us, he
8 has enumerated the reasons and they were told to him by
9 Mr. Rosenfeld.

10 Q Do you know if Mr. Rosenfeld also informed
11 Mr. Rauch of the directive?

12 MR. GORDON: Your Honor, I think this is unnecessary.
13 We have had direct testimony.

14 THE COURT: I think we are going all over the same
15 darned ground, but, he can answer that.

16 When you talked to Rauch, was Rosenfeld there?

17 THE WITNESS: Not even time. But I'm sure Mr.
18 Rosenfeld had discussions.

19 THE COURT: Were you all there at one time when
20 this warning was the subject of conversation?

21 THE WITNESS: I think it was just Mr. Rosenfeld
22 and myself initially late one afternoon, but subsequent
23 to that time I'm sure Mr. Rosenfeld, I know Mr. Rosenfeld
24 had spoken to Mr. Rauch a number of times.

25 Q Do you know if Mr. Rauch purchased 1,000 shares

of Geon on February 19, 1974?

A Most definitely.

Q Did you have a conversation with Mr. Rauch concerning that purchase?

A Absolutely.

Q Can you relate that conversation, please?

A I remember as if it was yesterday, because it was funny. He had turned around and asked me what the commission is on a thousand shares of a 14-3/4 dollar stock, and I happened to have the commission rate book, one of them in the office, and I computed it for him. And then I asked him, why? Because my curiosity was up. And he said he was considering buying another thousand shares for, I believe his own account. To which I said, you know, I didn't understand why, but after a discussion it came out that the market had been so bad and he felt confident in this stock, and so he wanted to buy it.

THE COURT: Did he give you any other reason than that?

THE WITNESS: No, nothing other than just he wanted to buy -- well, the deal had been announced at \$16.80, or a preliminary deal, anyway, and he felt that this is the best stock to be in at the time.

THE COURT: But why, he didn't give any reason why

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Lynn-direct

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this occurred to him on February 19th?

THE WITNESS: No, nothing on that date. No reason other than that he wanted to know what the commission was.

Q Did you inform Mr. Rosenfelt of Mr. Rauch's intention to buy 1,000 shares?

A I don't know if I did or if Marvin did himself. I'm not sure. I don't recall whether I specifically went in and told him.

Q Do you know that either one of you definitely did inform Mr. Rosenfeld?

A No.

Q Did you object to Mr. Rauch that he should not buy 1,000 shares?

A I told him I thought he had too much at that particular point, but it's his own money. I can't tell him what to do with his own money. It wasn't for a customer who was heavy in the stock. It was his own money. I can't tell him what to do in that respect.

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Lynn-direct

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2 Q Did you ever contact any of Mr. Rauch's
3 customers concerning the suitability of Geon in their
4 accounts?

5 A At what time? When?

6 Q Over the period from when you heard the
7 directive through February 22, 1974.

8 A One or two that happened to come into the
9 office, I spoke to them about the fact of their positions in
10 Geon.

11 Q Mr. Lynn, were you aware that Mr. Rosenfeld
12 purchased stocks for his own account on December 6th, 1973?

13 MR. GORDON: Your Honor, I don't see the need
14 to go into this by indirection.

15 THE COURT: Do you know whether he did?

16 THE WITNESS: I know he purchased some shares.
17 The date I don't know.

18 THE COURT: You don't know. All right.

19 Q Did you purchase shares for your own account on
20 December 6th?

21 A I don't recall. I know I purchased a total of
22 800 all together. I don't know the -- the bulk of it was
23 done in the beginning of November, and that's -- after that
24 it was small pieces here and there.

25 Q Mr. Lynn, what time did you get to the office on

2 February 22?

3 A Forgive me for laughing. I was waiting on line
4 for gas, and I got in about -- a few minutes after 10:00,
5 I believe.

6 Q What did you do? Can you explain what happened
7 when you got in?

8 A I went over to my desk, I started opening my
9 mail, my morning routine, and that was it.

10 Q Did you have any conversations with Marvin
11 Rauch shortly after getting in?

12 THE COURT: No, you have asked him what happened.
13 Now, all these questions. What happened? You went in there
14 and you read your mail, and what else happened?

15 THE WITNESS: Right then what happened was,
16 Marvin turned around to me and asked me a question, what
17 does imbalance mean to you. And I said, imbalance, I said,
18 what is imbalance? And he said, Geon. So I said, well, I
19 think imbalance, in my experience has meant that the stock
20 is going to open low. And so we then went to Mr. Rosenfeld's
21 office to discuss what imbalance meant.

22 THE COURT: Well, you think imbalance means
23 stock is going lower?

24 THE WITNESS: Yes.

25 THE COURT: Why can't it mean it's going higher?

3Cmd

Lynn-direct

THE WITNESS: It's just in my experience imbalance is in flux.

THE COURT: You just think it is bad news when it's in imbalance?

THE WITNESS: Yes, my own interpretation.

Q Did Mr. Rauch tell you that he had placed an order to sell 1,500 shares prior to the opening, or prior to 10:00 o'clock that morning?

THE COURT: Can't we go through this? Now you keep interrupting with all these questions going over the ground we covered. You went in to see Mr. --

THE WITNESS: Mr. Rosenfeld.

THE COURT: All right. What happened then?

THE WITNESS: We just discussed the imbalance at the opening, what it meant, and my feeling was that it meant that it was --

THE COURT: What happened after that?

THE WITNESS: We went out, the American Stock Exchange tickers were out at that point and so I think a call was made to the order desk to find out if it was going to be up or down.

THE COURT: Who did that?

THE WITNESS: I think Mr. Rosenfeld.

THE COURT: You didn't do that?

1 4CMD

Lynn direct

757

2 THE WITNESS: No. Then I believe somebody
3 shouted that Geon was on the tape, we have a Dow Jones News
4 Service tape, and they gave an indication of opening of
5 14-1/4 or 3/4. Then I believe I went back to my desk to
6 call certain people.

7 Q How many shares of Geon did you own as of
8 February 22?

9 A 1,365.

10 Q Is that your own or your customers?

11 A That was 100 of my own and the balance for my
12 customers.

13 Q Did you sell 100 shares for your own account on
14 February 22?

15 A Yes, I did.

16 MR. RUBIN: I have no further questions, your
17 Honor.

18 THE COURT: All right. Mr. Gordon?

19 MR. GORDON: Your Honor, first of all, in the
20 intermission I believe that the Commission erred in connect-
21 ion with the shares sold for Mr. Mazlow. The fact is,
22 2,000 shares, as Mr. Rosenfeld testified. Is that right?

23 MR. PERLIS: This was not a Commission error,
24 your Honor. There was an agreed exhibit checked on by
25 Edwards & Hanley which said that 2,000 shares were sold. I

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Lynn-direct/cross

subsequently checked on the transaction blotter and found
that 2,000 shares had been sold as Mr. Rosenfeld has said.

THE COURT: All right.

MR. GORDON: Thank you.

THE COURT: You may proceed, Mr. Gordon.

CROSS-EXAMINATION

BY MR. GORDON:

Q Mr. Lynn, can you tell the Court very briefly
your educational background?

A I graduated from CCNY, Bernard Baruch School,
with a Bachelor of Business Administration degree, and I
went to work for an accounting firm for three years prior
to my coming into Edwards & Hanley.

Q There has been testimony here today concerning
the purchasing and selling of Geon stock by you for your
own account and your customers.

Did you ever knowingly coordinate your purchases
and sales with those of Mr. Rosenfeld and Mr. Rauch?

MR. RUBIN: I object, your Honor.

THE COURT: I'm going to sustain the objection
to the form of that question. That is purely self-serving.
As I listen to all this, you fellows were buying and selling
around the same time; isn't that right?

THE WITNESS: Well, buying, not selling, I

1 6Cmd

Lynn-cross

2 don't think. Because I was selling from the middle of
3 December straight through.

4 THE COURT: How about on February 22?

5 THE WITNESS: It was just the 500 shares, that's
6 the only thing I sold.

7 THE COURT: Yes, but you knew that morning
8 that --

9 THE WITNESS: Oh, that's other sales.

10 THE COURT: Yes. You knew all that, didn't you?

11 THE WITNESS: Yes, I knew that other sales were
12 being made, but I was the first one in.

13 THE COURT: Yes.

14 BY MR. GORDON:

15 Q Mr. Lynn, during the period from November 15th
16 through to February 22nd, how many shares approximately of
17 Geon stock did you sell for the account of yourself and
18 your customers?

19 A From November 15?

20 Q Around November 15, yes.

21 A I really didn't do much selling until the middle
22 of December, I believe. I think it's from December 15th
23 to February 22nd, I sold 80, 90 percent of whatever I had.

24 Q Why did you sell those shares during that
25 period of time?

7CmD

Lynn-cross

1 A Quite frankly, I was very disappointed in the
2 announcement that had come out in the middle of December.
3 The preliminary negotiations had called for a deal for about
4 \$16.80 a share, and I felt that the risk reward ratio for
5 my customers with the stock at \$13, \$14, for them to look
6 for two points on the upside it didn't pay to be in that
7 stock any longer, so I sold. I recommended the sale to my
8 customers.
9

10 Q Did you discuss your selling with Marvin Rauch
11 prior to the execution of the sell orders?

12 A Each one?

13 Q Or in general.

14 A No, I just did it on my own.

15 Q On February 22 would you tell the Court the
16 reason for your selling out the 100 shares which you then
17 had remaining in your account?

18 A I'd say the initial reason was probably fear.
19 I got a little concerned at the opening, and I just -- I
20 don't know why I didn't sell to this day, why I didn't sell
21 all 1,365. But I know I just sold the portion -- I guess
22 it's because back in December there was a loud fluctuation
23 in the stock one day, it was 12-5/8, and the next thing I
24 knew an hour later it went down to 9-3/8 or something, then
25 closed at 12-3/8, and my first reaction was to say, oh, oh,

here we go again.

So I only sold the 500 and not the full 1,300, but it had to be, I think, a fear motivation more than anything else.

Q On the 22nd, Mr. Lynn, did you have any conversation with Mr. Rauch which contributed to your decision to sell?

A No. As I said, I picked up the phone right after the opening and I sold mine, and afterward I'm sure, you know, we had various discussions. But my 500 that I sold was done right after the opening.

MR. GORDON: No further questions.

MR. STRUM: I have no questions, your Honor.

THE COURT: Are there any other questions?

MR. RUBIN: Your Honor, I have a few short questions.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. RUBIN:

Q Mr. Lynn, you did have a conversation with Mr. Rauch prior to placing your order to sell the 500; is that correct?

A I had a conversation concerning the imbalance, but, you know, what it meant, but not anything else.

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Lynn-redirect

Q When you say after the opening you are talking about the delayed opening, not shortly after the opening of the market at 10:00 o'clock; is that right?

A The delayed opening of that specific stock, that's correct.

MR. RUBIN: Thank you.

THE COURT: All right. No more questions?

Thank you, sir, you are excused.

(Witness excused.)

MR. RUBIN: Your Honor, the SEC calls Louis Maione.

L O U I S M A I O N E, called as a witness on behalf of the plaintiff, having first been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. RUBIN:

Q Mr. Maione, please state your name.

A Louis Maione.

Q Your address, your home address?

A 1585 Odell Street, Bronx, New York.

Q Where are you employed?

A Metropolitan Life Insurance at Stuyvesant Town.

THE COURT: What is your job there?

THE WITNESS: Electrical supervisor.

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Maione-direct

Q Are you related to James McMahon?

A I am.

Q What is the relationship?

A Son-in-law.

Q Mr. Maione, did you ever have a brokerage account with Edwards & Hanley?

A Well, my son-in-law took care of that.

THE COURT: The question was, do you know, did you have an account yourself with Edwards & Hanley?

THE WITNESS: No.

THE COURT: No account?

THE WITNESS: No.

Q Have you ever been to the Edwards & Hanley's Hewlett office?

A Never.

Q Have you ever been to any other Edwards & Hanley office?

A Never.

Q Have you ever spoken on the telephone prior to February 22, 1974 with any employee of Edwards & Hanley?

A Well, I don't know exactly the date, but I did talk to Marv.

THE COURT: Talk to what, sir? What did you talk to?

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Maione-direct

THE WITNESS: Marv. I don't know his last name.

THE COURT: Marv?

THE WITNESS: Marv.

THE COURT: All right. When was that?

THE WITNESS: I don't know exactly when. Whether it was before or after this date that you're referring to.

THE COURT: Did he call you or did you call him?

THE WITNESS: He called me.

THE COURT: Do you think that was in this year 1974? Was it before Christmas or after Christmas?

THE WITNESS: No, it was after Christmas.

THE COURT: You're not quite sure when?

THE WITNESS: No.

BY MR. RUBIN:

Q Do you recall the substance of the conversation, Mr. Maione?

A Offhand, I don't. I would be lying if I told you what it was all about. But there was somebody else that got on the phone right after Marv and he wanted to know if I was James McMahon's father-in-law, or was James McMahon my son-in-law.

Q Do you know where Mr. Rauch was when he called you?

A No, I have no idea.

1 12CMD

Maione-direct

2 THE COURT: Where were you, sir? In Stuyvesant
3 Town?

4 THE WITNESS: In my office. yes.

5 THE COURT: This was during the day?

6 THE WITNESS: Yes.

7 Q Did the other person who got on the phone
8 identify himself?

9 A No.

10 Q Did you ever give Mr. McMahon written authority
11 to open a stock brokerage account for you?

12 A I did.

13 Q Written authority?

14 A No, not a written authority, no, I'm sorry.
15 Just a verbal.

16 THE COURT: When was that, sir?

17 THE WITNESS: '73 I think it was. Last year.

18 THE COURT: Last year?

19 THE WITNESS: Yes.

20 THE COURT: You wouldn't remember when?

21 THE WITNESS: Not offhand.

22 Q Mr. Maione, do you know what a margin account is?

23 THE WITNESS: Pardon me?

24 Q Do you know what a margin account is?

25 A I don't know anything about stocks.

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Q Have you ever signed a margin agreement?

A Never.

Q Do you know what a margin agreement is?

A No.

Q Mr. Maione, I would like to show you SEC
Exhibit 20, it is an Edwards & Hanley's customers agreement.

Can you tell me if that is your signature at the
bottom of that agreement (handing)?

A No, it's not.

Q Have you ever seen that document before?

A Never.

Q Mr. Maione, I would also like to show you SEC
Exhibit 19, it is a new account report.

Have you ever seen that document before, sir
(handing)?

A Never.

Q Could you look at the data, the information on
that card? Is any of the information on that card incorrect,
sir?

A The business address is wrong.

Q The business address is wrong?

A Yes, sir.

THE COURT: You fellows know what this is. Let
me see it.

14Cmd

Maione-direct

The Odell Street is all right, 1585?

THE WITNESS: Yes, the business address is wrong.

THE COURT: 741 Grand Street, that's wrong, you
are in Stuyvestant Town; is that right?

THE WITNESS: That's right.

THE COURT: Metropolitan Life is all right,
isn't it?

THE WITNESS: Yes.

THE COURT: Is that your home telephone number
here, TA 8-2823?

THE WITNESS: 2832, yes. 2832.

THE COURT: That looks like 23 to me. What is
your business phone number?

THE WITNESS: 777-1600.

THE COURT: Got that right.

Don't ask me about "position." I can't read it
either.

BY MR. RUBIN:

Q Is the bank reference correct, sir?

THE COURT: What is your bank, sir? What bank
do you use?

THE WITNESS: Well, I have a business bank,
First National City in Parkchester.

Q Does the bank reference spot indicate that on

the account card?

THE COURT: I don't know why we have to worry him about it.

What does it indicate?

MR. RUBIN: I believe it says "Dollar Savings," your Honor.

THE COURT: Dollar Savings? Do you have an account at Dollar Savings?

THE WITNESS: Yes, I have.

THE COURT. All right.

Q Mr. Maione, did you purchase any shares of Geon in November 1973?

A I have a slip here, I don't know if that's the one you're referring to.

MR. GORDON: Your Honor, could we have that slip marked for identification, please?

THE COURT: Yes, indeed.

THE WITNESS: In March.

THE COURT: In March of 1974?

THE WITNESS: 3.

THE COURT: March of 1973.

All right, do you want to take this and mark it?

(SEC Exhibit No. 22 was marked for identification.)

xxx

BY MR. RUBIN:

Q Mr. Maione, this confirmation slip indicates 100 shares purchased March of 1973. The question was, did you purchase any Geon in November of 1973.

A No.

Q Did you receive any payment notices from Edwards & Hanley in November of 1973?

THE COURT: Any what kind of notices?

MR. RUBIN: Either overdue payment, margin call notices.

THE COURT: Did you receive any notices from Edwards & Hanley?

THE WITNESS: I did receive them, yes.

THE COURT: You did receive them?

THE WITNESS: I turned them over to my son-in-law.

THE COURT: Do you remember what they were?

THE WITNESS: Well, different shares, 100 shares, 200 shares. I don't remember exactly.

THE COURT: It looks like these were purchase orders. Were they, or did you know?

THE WITNESS: I couldn't tell you for sure. Just statements.

THE COURT: What do you do when you get a bill? You look at it, don't you?

1 17CMd Maione-direct 7.0

2 THE WITNESS: Yes.

3 THE COURT: Would you say these looked like

4 bills?

5 THE WITNESS: Anything that had to do with

6 Edwards & Hanley I just turned it over to my son-in-law.

7 THE COURT: You paid no attention to it?

8 THE WITNESS: That's right.

9 BY MR. RUBIN:

10 Q Did anyone from Edwards & Hanley contact you

11 concerning payment of the stock?

12 A No.

13 Q The Geon stock?

14 A No.

15 Q Did you sell any Geon stock on February 22, 1974?

16 A No.

17 MR. RUBIN: I have no further questions, your

18 Honor.

19 THE COURT: By the way, do you gentlemen want

20 to hold onto that slip? I would like him to get it back at

21 some point. It is his property.

22 MR. GORDON: No, he can have it, your Honor.

23 THE COURT: Are you going to need it, gentlemen?

24 MR. RUBIN: No, your Honor.

25 MR. STRUM: No, your Honor.

1 18CMD Maione-direct/cross

2 THE COURT: All right. I would like to give it
3 back to him.

4 MR. GORDON: He can have it now, your Honor.

5 THE COURT: All right. I'll let him have it
6 back.

7 CROSS-EXAMINATION

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8 BY MR. GORDON:

9 Q Mr. Maione, did you give your son-in-law,
10 Mr. McMahon, authority to open an account at Edwards &
11 Hanley in your name?

12 A Well, he told me he was going to open it, he
13 wanted to know if it would be all right for him to open an
14 account.

15 Q What did you tell him?

16 A Yes.

17 Q Did he tell you why he was going to open an
18 account at Edwards & Hanley?

19 A To buy stocks.

20 Q Did he tell you what stocks?

21 A Geon.

22 Q Did he tell you that before he bought shares
23 in an account in your name at Edwards & Hanley?

24 A Would you please repeat that?

25 Q Yes. Did he tell you that he was going to buy

Geon in an account at Edwards & Hanley before he did it?

A No, he didn't tell me who he was going to buy them with.

Q No.

THE COURT: I think the question, let me see if I can get it straight. He said he wanted to open an account in your name at Edwards & Hanley, and you said all right; is that right?

THE WITNESS: As I say, he didn't tell me who he was going to open it with.

THE COURT: He didn't say anything about Edwards & Hanley, he just said he was going to open an account?

THE WITNESS: Yes.

THE COURT: In your name?

THE WITNESS: Yes.

THE COURT: Then he said he was going to buy Geon?

THE WITNESS: yes.

THE COURT: What did you say about that?

THE WITNESS: All right.

THE COURT: Okay?

THE WITNESS: Yes.

BY MR. RUBIN:

Q You didn't know where it was going to be?

1 20CMD

Maione-cross

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2 A No.

3 Q Did he tell you how many shares of Geon he was
4 going to buy?

5 A No.

6 Q Did you ever get any papers from Edwards &
7 Hanley?

8 A All the stocks?

9 Q No, did you ever get any papers from Edwards &
10 Hanley?

11 THE COURT: He indicated he did get some state-
12 ments.

13 A I got statements.

14 THE COURT: And he just gave them, you just
15 gave them to your son-in-law?

16 THE WITNESS: Son-in-law.

17 Q When you got the statements from Edwards &
18 Hanley, did you object to anything on those statements?

19 A As I said before, I didn't bother to look. I
20 just looked at them and turned them right over to him
21 because I don't know how to read them.

22 Q Did you ever call up anyone at Edwards & Hanley
23 and ask how come you were getting a statement from them?

24 A Never.

25 MR. GORDON: No further questions.

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Maione-cross

THE COURT: Does anybody have any questions?

MR. STRUM: No questions.

THE COURT: Are there any further questions?

MR. RUBIN: No further questions.

THE COURT: Thank you, Mr. Maione, you are
excused.

(Witness excused.)

MR. PERLIS: Your Honor, at this time the SEC
would call Mr. Raleigh Gilbert.

R A L E I G H G I L B E R T, called as a witness on
behalf of the plaintiff, being first duly sworn by
the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. PERLIS:

Q Sir, will you please state your full name?

A Raleigh L. Gilbert.

Q Where are you employed?

A Edwards & Hanley.

Q In what capacity?

A I'm a partner.

Q What function do you perform aside from being
a partner? Are you in charge of some division?

A Customer complaints, registration of registered
representatives, administrative assistant to Mr. Edwards and

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1 22CMd Gilbert-direct
2 various other small duties, such as okaying of small bills,
3 approval of customer letters.
4 Q When were you employed by Edwards & Hanley?
5 A 1954.
6 Q In what capacity were you employed at that time?
7 A As a trainee, sales trainee.
8 Q Did there come a time, sir, in or about
9 October of 1973 that you became aware of a substantial
10 position of Geon Industries at the Hewlett branch of
11 Edwards & Hanley?
12 A Yes, sir, it was brought to my attention.
13 Q How did it come to your attention?
14 THE COURT: Who brought it to your attention?
15 THE WITNESS: I believe it was the manager, or
16 the partner in charge of the margin department.
17 THE COURT: Who was that?
18 THE WITNESS: Mr. Horatio Patti.
19 THE COURT: Horatio Patti?
20 THE WITNESS: Yes.
21 Q What did Mr. Patti tell you?
22 A That there was a substantial accumulation of
23 Geon stock in the one branch, the Hewlett branch.
24 Q Did he indicate to you that he was upset about
25 this, or that some action should be taken with regard to it?

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Gilbert-direct

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2 A He wanted the information to be given to
3 Mr. Edwards.

4 Q For what purpose did he tell you?

5 A He just felt that he should be aware of it.

6 Q Did you convey this information to Mr. Edwards?

7 A Yes, I did.

8 Q Did you inquire if the --

9 THE COURT: Wait a minute. Do you remember when
10 this was?

11 THE WITNESS: To the best of my memory, some
12 time in October.

13 THE COURT: October of last year?

14 THE WITNESS: Yes, sir.

15 Q Were you able to ascertain whether or not it was
16 any particular registered representative who was
17 responsible for this accumulation of Geon at that time?

18 A I think that the name of Mr. Rauch was mentioned.
19 I'm not exactly sure, though.

20 Q You reported this to Mr. Edwards, did you not?

21 A Yes.

22 Q What was Mr. Edwards' response?

23 A He asked me to call Mr. Rosenfeld, the manager
24 of the Hewlett office, and make sure that he was aware of
25 the situation, that he was staying on top of it.

1 24CMD
2 Q Did you request Mr. Rosenfeld to take any
3 affirmative action aside from just generally staying on top
4 of it?

5 A No, sir, I did not.

6 Q When did you make this call?

7 A Sometime in October.

8 Q Early? Middle? End?

9 A Couldn't have been the end. I was away on
10 vacation. So it must have been before that. But beyond
11 that I really can't pin it down.

12 Q Did you indicate to Mr. Rosenfeld at that time
13 that he should exercise caution with respect to purchasing
14 additional Geon shares?

15 A No. At that time I just made sure that he was
16 aware of the position and that he was --

17 THE COURT: Staying on top of it.

18 THE WITNESS: Yes, sir.

19 THE COURT: That's it, told him to stay on top
20 of it.

21 Q Did Mr. Rosenfeld indicate to you what if anything
22 he would do to stay on top of the situation?

23 THE COURT: The thing I'm interested in is this
24 fellow Patti or Mr. Edwards. Did they indicate what
25 difference does it make if there was an accumulation of Geon

1 25CmD Gilbert-direct

2 in the Hewlett branch? So what?

3 THE WITNESS: No. He always wanted to be kept
4 advised of any large positions in the firm, or in any branches.

5 THE COURT: Why?

6 THE WITNESS: For any potential problems, I
7 assume, that could arise from it.

8 THE COURT: But you didn't have any particular
9 reason in mind. He had a feeling that he didn't want large
10 accumulations in a branch --

11 THE WITNESS: I assume that's right, sir, yes.

12 Q So was this concern on Mr. Patti's partly the
13 result of the Trans-Lux situation?

14 MR. GORDON: Objection.

15 THE COURT: I will sustain that. We have got
16 enough trouble without getting into Trans-Lux.

17 MR. PERLIS: Your Honor, could I make a proffer
18 on this line?

19 THE COURT: No, because he doesn't know. I
20 mean, he said he was told.

21 You were just told by Mr. Edwards after you had
22 reported Patti's conversation to call Rosenfeld and keep on
23 top of it; is that correct?

24 THE WITNESS: Yes, sir, that's correct.

25 THE COURT: All right.

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26CMD Gilbert-direct

Q After you contacted Mr. Rosenfeld and informed him to stay on top of the situation, did there come a time when the accumulation of Gen shares at Hewlett was again called to your attention?

A Yes.

Q When was that?

A About the middle of, sometime in the middle of November.

Q How was that brought to your attention and by whom?

A Again by Mr. Patti, and the fact that there had been some fairly good price movement in the stock, and that we still had a very large position in it.

Q Did Mr. Patti inform you as to whether or not the position --

THE COURT: What is a good price movement?
Going up?

THE WITNESS: No, that there had been action both ways in it actually.

THE COURT: That is what you call a good price movement?

THE WITNESS: Well, not good, I suppose my use of the words there --

THE COURT: There had been substantial trading,

would that be it?

THE WITNESS: Well, that along with the price movement.

THE COURT: All right.

Q Would you say that --

THE WITNESS: Fluctuation in price, I think.

THE COURT: What did you do at that time?

THE WITNESS: I again reported it to Mr. Edwards, and he asked me to call Mr. Rosenfeld with some suggestions.

THE COURT: Which were?

THE WITNESS: That he should advise any clients who had substantial holdings in the stock that it might be wiser for them to lighten up on their holdings, to lessen their holdings, or not purchase additional shares.

Also that any customers that came in that wished to purchase stock should be advised that they would be expected to pay promptly.

THE COURT: What did you do when Mr. Edwards told you that?

THE WITNESS: I called Mr. Rosenfeld and gave him those suggestions.

THE COURT: When you say those suggestions, what does that mean?

THE WITNESS: Well, I think that Mr. Edwards

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Gilbert-direct

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felt that Mr. Rosenfeld had probably covered a lot of these areas, but that he wanted these suggestions given to them in case he hadn't thought of them himself.

THE COURT: In other words, this was not in the nature of a directive to Rosenfeld, these were suggestions that Edwards thought he ought to do?

THE WITNESS: Yes.

BY MR. PERLIS:

Q Did one of those suggestions include lightening up in Geon if possible?

MR. GORDON: He has already testified to that.

THE COURT: He has covered that. You have got to lighten up and discourage them from buying more.

THE WITNESS: Yes, sir.

Q Did you monitor the situation at the Hewlett office to determine whether or not Mr. Edwards' suggestions had taken any effect with regard to the increased purchases or lightening up of Geon?

A No, sir, I did not.

Q Did it come to your attention as to whether or not more Geon shares had been purchased at the Hewlett office after these suggestions had been made?

A I don't remember any other specific situations with Geon where it was brought to my attention, no.

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1 29CMD Gilbert-direct

2 THE COURT: Patti didn't come back?

3 THE WITNESS: No, sir, not to me.

4 THE COURT: Not to you at any rate, right.

5 All right.

6 Q This situation was then being left to

7 Mr. Rosenfeld to manage?

8 THE COURT: What's that? No, I will sustain

9 the objection. He made the suggestions and he didn't hear

10 any more from Patti and he didn't hear any more about Geon

11 at the Hewlett office; is that right?

12 THE WITNESS: That's right.

13 MR. PERLIS: No further questions.

14 MR. GORDON: No questions.

15 MR. SIRUM: I have no questions.

16 THE COURT: Thank you, Mr. Gilbert. You are

17 excused.

18 (Witness excused.)

19 MR. PERLIS: Your Honor, prior to resting its

20 case the Commission had planned to call one additional

21 witness, Mr. Ivan Boesky. We were informed by Mr. Ge.

22 that Mr. Boesky is currently out of town and will not

23 return until Monday. That is my understanding.

24 THE COURT: All right. Well, if you want to

25 hear him, you gentlemen tell me how long you think you want

1 30CMD

Gilbert-direct

2 on this case. How much time do you want?

3 MR. GORDON: Your Honor, I think in view of the
4 testimony I have only one witness to call, and that
5 witness is sitting right here and his name is Bert Edwards.

6 THE COURT: Why don't we put him on? We will
7 put him on a few minutes and we will get along.

8 How about you, Mr. Strum, how long a case do
9 you visualize?

10 MR. STRUM: Your Honor, I would not like to
11 answer that question until after I hear Mr. Boesky's
12 testimony, but I can say that not having heard Mr. Boesky's
13 testimony I still anticipate my case will be very short.

14 THE COURT: All right. Well, that is a help.
15 Well, why don't we take on Mr. Gordon's witness, perhaps we
16 can finish with him.

17 Is there any objection to that?

18 MR. DRAKE: No, your Honor. I just want to say
19 before the Commission formally closes we would like to
20 submit some investigative transcripts.

21 THE COURT: You will have time for that.

22 Go ahead, Mr. Gordon.

23 MR. GORDON: I call Mr. Bert G. Edwards to the
24 stand.

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1 31CMD

2 B E R T G. E D W A R D S, called as a witness on
3 behalf of defendant Edwards & Hanley, having been
4 first duly sworn by the Clerk of the Court, testified
5 as follows:

6 MR. GORDON: Your Honor, I might say Mr. Edwards
7 is somewhat hard of hearing and --

8 THE COURT: If you don't hear what these fellows
9 say, just holler and make them talk louder.

10 DIRECT EXAMINATION

11 BY MR. GORDON:

12 Q Mr. Edwards, are you one of the two co-managing
13 partners of the firm of Edwards & Hanley?

14 A Yes.

15 Q Is the name Edwards & Hanley your family name?
16 Does it come from your family name?

17 A Edwards is.

18 Q Was your father one of the founders of the firm?

19 A Yes.

20 Q How long have you been with Edwards & Hanley?

21 A 1951.

22 Q When did you become a managing partner of the
23 firm?

24 A Around '56 or '57.

25 Q Who is at the present time your co-managing

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partner?

Edwards-direct

A Bob Zoellner.

Q Can you tell us, please, what in general are
your functions as co-managing partner of Edwards & Hanley?

A Manage the firm.

Q Is there anything in particular that you do
that Mr. Zoellner doesn't do, or vice-versa?

A I guess there are some specific things that
Mr. Zoellner does that I do not do.

Q Yes. Vice-versa. I'm just trying to establish
the nature of what you do.

THE COURT: Why don't you do that?
What do you do?

THE WITNESS: Well, I manage the firm, I watch
what Mr. Zoellner does as well as with everything else that
happens in the firm. He's in charge of the money we commit
to various --

THE COURT: What does the firm do? It is a
brokerage firm, do you underwrite?

THE WITNESS: Yes. We are a full brokerage firm.
We are in syndications, we are principal market makers,
over-the-counter, we are major corporate bond brokers.

THE COURT: Stocks, bonds?

THE WITNESS: Stocks, bonds, mutual funds. We

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33CMD Edwards-direct

are not in commodities.

THE COURT: Municipals?

THE WITNESS: We have a large municipal bond department.

THE COURT: Government bonds?

THE WITNESS: We don't do much in government bonds.

THE COURT: You don't do anything in commodities?

THE WITNESS: Nothing in commodities.

BY MR. GORDON:

Q Mr. Edwards, did there come a time when a concentration in Geon stock at the Hewlett branch was called to your attention?

A Yes.

Q Approximately when was that, sir?

A Whenever it came in, I would guess.

THE COURT: Do you remember when that was?

THE WITNESS: No, not specifically. I have heard other testimony, but I don't personally remember.

THE COURT: You have no particular recollection?

THE WITNESS: No.

THE COURT: DO you remember who reported to you about that?

THE WITNESS: I imagine Bud Gilbert.

THE COURT: Mr. Gilbert did?

THE WITNESS: I imagine.

THE COURT: He said he did.

THE WITNESS: Yes. I heard him say it.

THE COURT: He said he got it from somebody
called Patti.

THE WITNESS: Right.

THE COURT: Who is Patti?

THE WITNESS: He's the head margin clerk.

BY MR. GORDON:

Q Did there come a time when you called
Mr. Martin Rosenfeld concerning the concentration of Geon
stock?

A Yes.

Q Do you remember when that was approximately?

A Soon after I heard about the concentration.

Q Do you remember what, if anything, you said to
Mr. Rosenfeld?

A I have known Marty a long time. I just asked
him, what's the story on Geon.

THE COURT: What did he say?

THE WITNESS: He would say a registered
representative came in, we had a pretty big position in it
when he came in, he liked the stock, he was on top of it,

1 35CMD

Edwards-direct

2 it was a good-sized flow to the big market and he was on
3 top of it. And I said, well, just watch it.

4 THE COURT: Did you tell him to get on top of it?

5 THE WITNESS: No.

6 THE COURT: That's what Gilbert said. He said
7 that he told Rosenfeld to get on top of it.

8 THE WITNESS: On top of it, yes. I find him a
9 very qualified manager. He's been on a long time.

10 THE COURT: What did you say to him again?

11 THE WITNESS: To stay on top of it.

12 THE COURT: Stay on top of it, all right.

13 BY MR. GORDON:

14 Q Did there come a time when you had another
15 conversation with Mr. Rosenfeld concerning the concentration
16 of Geon?

17 A I think yes. The stock dropped very sharply
18 one day in what I considered to be light volume, and I said
19 oh, oh, that's trouble.

20 Q So did you call Mr. Rosenfeld?

21 A Yes.

22 Q What did you tell him?

23 THE COURT: Do you have any idea when this was?
24 When was this?

25 THE WITNESS: If I could look at the price action

36Cmd

Edwards-direct

of the stock and the volume --

THE COURT: They have got a list of it here. Take a look at it and see if that helps refresh your recollection.

Q Here you are (handing).

A That would be somewhere around the middle of November.

THE COURT: The middle of November 1973?

THE WITNESS: Right.

Q What did you say to Mr. Rosenfeld at that time, if anything?

A I don't recall exactly what I said, but it was not a panic situation as far as I was concerned. Just the situation that you, you know, you see a blinking light and you put a finger on it. I would have said to Marty, this stock looks like it's thinner than it has appeared to be. You have a lot of stock, I'd like to see people lighten up. I don't really want to see you buying any stock unless you can, you know, unless they pay for it, unless they are in cash account or in margin accounts that would handle the stock, or Geon would be zero.

It doesn't have to be really zero, it could be \$2 or \$3, but I don't want you to take any in at the present market price.

1 37CMD Edwards-direct

2 Q Mr. Edwards, did there come a time that you
3 learned that certain sales had been made in the Hewlett
4 office based on alleged inside information on February 22?

5 A Certainly. I just don't know -- must be when
6 my attorney, Mr. Gleit informed me, I would think.

7 THE COURT: That is the first you heard about it?

8 THE WITNESS: I would think so, yes.

9 Q Following that conversation, or conversations,
10 when you first learned about it, Mr. Edwards, did there
11 come a time when Edwards & Hanley broke certain trades
12 which had been made on that day?

13 A Yes.

14 THE COURT: What do you mean by broke certain
15 trades?

16 THE WITNESS: Well, some of the people who sold
17 the stock through our Hewlett office appeared to be insiders.
18 Our first position was, well, what we will do is just tie
19 up all the funds of anybody that sold the stock in Geon
20 and let the sales stand.

21 Then when more information came out that they
22 seemed to be pretty much insiders and they sold to the
23 street, you know, other brokers, we took the action of
24 breaking the trade.

25 THE COURT: What is breaking the trade?

1 38CMD

Edwards-direct

2 THE WITNESS: Cancelling the trade.

3 THE COURT: Cancelling the trade?

4 THE WITNESS: Right. Whoever bought the stock
5 from the people who sold it now that the stock was suspended
6 in trading and had no market at all --

7 THE COURT: In other words, the buyer would
8 rescind the transaction?

9 THE WITNESS: No, we as agent for the seller
10 went to the buyer and said we would like to cancel the
11 trade, and obviously he was very pleased to cancel the
12 trade.

13 THE COURT: The stock was going down?

14 THE WITNESS: Right. Please cancel the trade.

15 BY MR. GORDON:

16 Q On these initial transactions, Mr. Edwards,
17 did you take the stock and put it back into the accounts of
18 the people who sold on alleged inside information?

19 A In cancelling the trades it was sold from their
20 account, so when you cancel the trade the stock, it was
21 there, if they had 100 shares of stock and sold it we
22 cancelled the trade, that sale is cancelled, so the stock
23 remains there.

24 Q Do you recall approximately when it was that
25 you cancelled these insider trades?

39CMD

Edwards-direct

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2 A Shortly after the testimony was received at the
3 American Stock Exchange, or with the SEC. That's a factual
4 thing.

5 MR. GORDON: I have the documents here. With
6 the SEC's stipulation I would like to put in the original
7 sale confirmations and the cancellation confirmations,
8 your Honor.

9 THE COURT: Have you seen these, gentlemen?

10 MR. DRAKE: No, sir.

11 MR. PERLIS: We don't object to that, your
12 Honor.

13 THE COURT: All right. Receive them in
14 evidence. I take it these are the records of Edwards &
15 Hanley?

16 MR. GORDON: In the ordinary course of business,
17 yes, sir.

xvx 18 (Edwards & Hanley Exhibit J was received in
19 evidence.)

20 MR. GORDON: Your Honor, from Edwards & Hanley
21 Exhibit J in evidence I can represent to the Court that the
22 trade date on these cancellations was March 4, 1974.

23 THE COURT: Well, now, would that mean,
24 Mr. Edwards, that March 4th was the date they were
25 cancelled?

1 40CMD

Edwards-direct

2 There is no period elapsing, is there?

3 THE WITNESS: I don't believe there would be
4 anything like a settlement date. A cancellation would be --5 THE COURT: So if it says the trade date was
6 March 4th, that was the date they were cancelled?

7 THE WITNESS: I would believe that, yes.

8 THE COURT: All right.

9 MR. DRAKE: Your Honor, we just stipulated to
10 these exhibits, we don't know whether they were actually
11 cancelled.12 THE COURT: I understand, but these are just
13 the records of Edwards & Hanley in the ordinary course of
14 business, that's why I'm receiving them.

15 BY MR. GORDON:

16 Q Mr. Edwards, following the cancellation of these
17 insider trades, did you have occasion to have conversations
18 with a representative of the American Stock Exchange
19 concerning the possible cancellation of additional trades?

20 A Yes.

21 Q Do you recall with whom you spoke?

22 A Yes, Ed Peterson.

23 Q Do you know what Mr. Peterson's position with
24 the American Stock Exchange was?

25 A Executive vice president. I believe he is

41CMD

Edwards-direct

executive vice president.

Q As a result of your conversations with Mr. Peterson did there come a time when Edwards & Hanley broke the remaining trades of February 22 out of the Hewlett office and broke the sell side of those transactions and put the stock into Edwards & Hanley's error account?

A No, that's not what we did. What we did is we broke the street side.

Q Then what did you do?

A We let the sell stand and we substituted Edwards & Hanley's error account for the buy side, for the street side. For instance, if the proverbial lady from Missouri bought 300 shares through Merrill Lynch, we went to Merrill Lynch and said, we don't believe there is any problem with this sell, but in order to maintain integrity, and there is some cloak over this whole situation, we will take it into our error account and let that little old lady off the hook.

THE COURT: I see. In other words, Merrill Lynch would give you back the claim on the stock?

THE WITNESS: Right. They bought it from us, we will say at \$14, and there was no market in the stock, and we went to them and said, we will cancel, although we believe that sale to be absolutely genuine.

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Edwards-direct

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2 THE COURT: Right.

3 THE WITNESS: But so far as the lady was
4 concerned, the thing was cancelled as far as she was
5 concerned, she didn't take the loss. She would get a call
6 from her broker and she would say, terrific.

7 THE COURT: And you had the stock back, and if
8 it went up you would come out all right and if it went down,
9 you wouldn't.

10 THE WITNESS: Yes, but we didn't think it was
11 going to go up.

12 THE COURT: You didn't think it was going to
13 go up?

14 THE WITNESS: No.

15 MR. GORDON: If your Honor please, may we mark
16 this for identification, please?

17 (Defendant Edwards & Hanley Exhibit K was
18 marked for identification.)

19 MR. GORDON: I would like to offer this in
20 evidence as a business record of Edwards & Hanley, your
21 Honor.

22 THE COURT: Have you gentlemen seen it?

23 MR. DRAKE: Yes, your Honor. Again it looks
24 like a microfilm of some records we are not familiar with.

25 THE COURT: Well, you tell me this comes out

of Edwards & Hanley, it is a business record?

MR. GORDON: Yes, your Honor.

THE COURT: On that basis I will receive it, subject to any further checking.

(Defendant Edwards & Hanley Exhibit K was received in evidence.)

BY MR. GORDON:

Q Mr. Edwards, do you recall approximately how many shares you took into your error account?

A I think 3,000. I'm not certain, but about 3,000.

MR. GORDON: Your Honor, the trade and settlement date, it's the settlement date, but I think in view of what it is, it is also the trade date on Edwards & Hanley's Exhibit K in evidence is April 2nd, 1974.

THE COURT: All right.

Q Mr. Edwards, do you know whether Edwards & Hanley still has that 3,000 shares?

A No, we sold them.

Q When did you sell them?

A A day or two after they resumed trading. 9-7/8.

Q You sold it at 9-7/8?

A Yes.

1 44CMd Edwards-direct 797
2 Q And it was taken into your error account at
3 prices of about 14; is that correct?

4 A Around 14 average, I think, yes.

5 Q So that am I correct that with respect to the
6 trades which were taken in your error account that you lost
7 approximately \$12,500?

8 A Probably. Just about.

9 Q Mr. Edwards, after the filing of the lawsuit
10 in this case by the Securities & Exchange Commission, did
11 Edwards & Hanley receive communications from customers
12 concerning the continuation of business with Edwards &
13 Hanley?

14 MR. PERLIS: Objection, your Honor. I would
15 ask for some kind of proffer here as to what counsel --

16 THE COURT: Would you read me that question
17 again, please?

18 (Question read.)

19 THE COURT: I will let him answer that. I am
20 sure he received the communications. I think I know the
21 answer.

22 You did receive communications?

23 THE WITNESS: Yes, we did.

24 THE COURT: All right.

25 MR. GORDON: Before I continue with that, would

1 45Cmd

Edwards-direct

2 you mark these documents for identification? I think you
3 can put them in as one exhibit.

xxx

4 (Defendant Edwards & Hanley Exhibit L was
5 marked for identification.)

6 THE COURT: I don't know about these other
7 exhibits. What is the offer of proof on these? Are these
8 the letters?

9 MR. GORDON: This right now? No, your Honor,
10 these are -- let me show them to Mr. Edwards.

11 THE COURT: Are these newspaper clippings?

12 MR. GORDON: Yes, your Honor.

13 MR. PERLIS: We would object on the grounds of
14 relevance again, your Honor.

15 THE COURT: What do I get out of a lot of
16 newspaper clippings?

17 MR. GORDON: Your Honor, part of the relief
18 which Edwards & Hanley is seeking from the Court is that
19 the Securities & Exchange Commission, when it commenced this
20 lawsuit, gave it enormous publicity before they had an
21 opportunity --

22 THE COURT: They always do.

23 MR. GORDON: Well, the question is, should they,
24 your Honor, because one of the things we think the Court
25 should do here is if the Court should find in Edwards &

46CMD

Edwards-direct

Hanley's favor is to compel the Commission to give equal publicity to that as they gave to the filing of the lawsuit on unsubstantiated charges.

THE COURT: I will consider that when it comes to settling a time for the judgment in this case, I will just leave it that they give a lot of publicity and this doesn't add to it. Is this the SEC publicity?

MR. PERLIS: No, your Honor. The SEC issued a litigation release, and that's all. The SEC does not solicit newspaper articles.

THE COURT: I know, but hopefully, and their hopes are usually granted, they get a big play in the Times and the Post. Maybe they didn't want it, but they are glad to have it. I think you might as well hold onto that in the event it comes to settling a judgment, whichever way I decide to do this I will consider it.

BY MR. GORDON:

Q Mr. Edwards, following the dissemination of this newspaper publicity did Edwards & Hanley receive calls from one or more customers who refused to do business with Edwards & Hanley in view of this pending lawsuit?

MR. PERLIS: I again object, your Honor, on the grounds of relevance.

THE COURT: Yes, I think I will sustain the

1 47CMd

Edwards-direct/cross

2 objection to that.

3 MR. GORDON: I have no further questions.

4 MR. PERLIS: Just about three brief questions,
5 your HOnor.

6 THE COURT: All right.

7 CROSS-EXAMINATION

8 BY MR. PERLIS:

9 Q As part of the trades that were broken after
10 the February 22 sales, Mr. Edwards, was one of those trades
11 the 4,400 shares that Mr. Rauch had crossed with Ivan
12 Boesky, the Edwards & Hanley Arbitrage partner?

13 THE COURT: Do you know?

14 A With Edwards & Hanley?

15 Q Yes.

16 A It wasn't Ivan Boesky's account, it's an
17 Arbitrage account. Edwards & Hanley Arbitrage account,
18 which was one buy --

19 THE COURT: And Boesky was the Arbitrageuer?

20 THE WITNESS: Right.

21 THE COURT: All right.

22 Q I show you again Exhibit G and call your
23 attention here to price fluctuations during the week of
24 December 21, 1973 with respect to the price at a high of
25 14-1/8 and a low of 9-3/8.

1 48CMD
2 A Yes.

3 Q Did you call Mr. Rosenfeld at any time during
4 that week to express any concern as to price fluctuations?

5 A In all probability, yes.

6 THE COURT: You don't recall, but you think
7 you would have?

8 THE WITNESS: Yes.

9 Q On March 4th when these trades were broken had
10 the American Stock Exchange already commenced its investi-
11 gation into these sales on February 22?

12 A I think the American Stock Exchange commenced
13 investigation, very rapidly so, I would say, yes.

14 Q And in fact, hadn't the Securities & Exchange
15 Commission also commenced its investigation and taken
16 testimony from several Edwards & Hanley employees by that
17 time?

18 A I guess that's correct.

19 Q Does Edwards & Hanley have any policy with
20 respect to the accumulation of large concentrations of any
21 particular stock in margin account?

22 A Don't have any policy, just watch it.

23 MR. PERLIS: I have nothing further.

24 MR. STRUM: I have no questions, your Honor.

25 THE COURT: All right. Are there any other

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49CMD

Edwards-cross

questions, Mr. Gordon?

MR. GORDON: Yes, your Honor. If your Honor please, I would like to call for a concession from the Commission that although these trades were broken on March 4th that Mr. Rosenfeld was the first witness called before the Securities & Exchange Commission, and that that was held on March 5th.

MR. DRAKE: Your Honor, I would be --

THE COURT: Well, those dates speak for themselves. You can tell me all that.

MR. DRAKE: Your Honor, the man had been subpoenaed at least a week before that.

THE COURT: All right.

MR. GORDON: Subpoenaed, sir?

MR. DRAKE: Well, I think we can deal with it in argument, your Honor.

THE COURT: Yes.

Do you have any questions you want to ask Mr. Edwards?

MR. GORDON: No, sir, no further questions.

THE COURT: Thank you, Mr. Edwards. You are excused.

(Witness excused.)

MR. DRAKE: Your Honor, subject to the call of

50CMD

Edwards-cross

1 Mr. Boesky, the Commission at this time would like to offer
2 again -- I know the Court has under consideration our
3 previous offer -- again we would like to offer for the
4 Court's consideration the Commission's investigative
5 transcript of Mr. Rosenfeld --
6

7 THE COURT: Yes, I know.

8 MR. DRAKE: (Continuing) Mr. Lynn --

9 THE COURT: Why do we want depositions of
10 Rosenfeld? He testified here. Do you mean I have to read
11 it all again?

12 MR. DRAKE: No, your Honor. For two reasons.
13 We think there are certain perhaps areas that he contradicts
14 himself in the sworn testimony.

15 THE COURT: Oh, you had a chance to cross-examine
16 him on that. I am not going to read all that stuff. You
17 have been asking him a lot of questions, and I'm not going
18 to -- he was here on the stand and you had a chance to
19 cross-examine him, and if he contradicted himself you had
20 a chance to bring it out.

21 MR. DRAKE: Your Honor, is it your position that
22 anyone that testifies we can't offer the investigative
23 transcripts? They are already on file with the Court.

24 THE COURT: I will tell you now I don't intend
25 to read them. I intend to rely on the record of this trial

1 certainly.

2
3 MR. DRAKE: We would like to file them anyway,
4 for whatever purpose they may --

5 THE COURT: You can mark them for identification,
6 if you want to.

7 MR. DRAKE: All right.

8 THE COURT: I'm going to decide this case on
9 the basis of the testimony I heard, on anybody who testified,
10 and not on all this stuff that you might have done down in
11 Washington.

12 (SEC Exhibits 23, 24, 25 and 26 were marked
13 for identification.)

14 MR. STRUM: Your Honor, may I just note for
15 the record my objection to the admission into evidence of
16 any of these investigative transcripts.

17 THE COURT: All right, it is noted.

18 MR. GORDON: I join in that objection, your
19 Honor.

20 THE COURT: You join. All right.

21 Now, there were a couple of other problems. I
22 think the depositions of the fellows that took the Fifth
23 Amendment.

24 MR. DRAKE: Yes, your Honor.

25 MR. STRUM: Mr. Rauch and Mr. McMahon.

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2 THE COURT: I haven't had a chance to read
3 these briefs, but I will, and let's take that up when we
4 take up the Boesky matter. I think what I'm going to have
5 to do on this, I am starting a criminal case on Monday and
6 as soon as I get some time, I would just like to finish
7 this thing up. It won't be very long now, will it? You
8 have Boesky, and how long have we?

9 MR. PERLIS: I would suspect 15 minutes, your
10 Honor.

11 THE COURT: Then how about you? Have you got
12 anything more?

13 MR. GORDON: No, sir.

14 THE COURT: And you haven't got much?

15 MR. STRUM: No. I think my case will take under
16 a half hour, your Honor.

17 THE COURT: Well, what I think I would like to
18 do, how much notice do you fellows need? Do you have to
19 come up from Washington?

20 MR. DRAKE: Yes, sir. We plan to go back home
21 this weekend. We will be available when the Court wants us.

22 THE COURT: What I would like to do, I will
23 finish this up some afternoon around 4:00 o'clock. If I
24 let you know a day ahead, could you do that?

25 MR. DRAKE: Yes, your Honor, I think so.

1 53CMD

2 MR. GORDON: Your Honor, I have one scheduling
3 conflict. I'm supposed to start a jury trial on Monday in
4 another court.

5 THE COURT: Is that in the state court?

6 MR. GORDON: Yes, sir. And I would expect to
7 be tied up if I have to start that trial for a couple of
8 days anyway.

9 THE COURT: Well, I will be tied up for a
10 couple of days, I can tell you that. I know this case on
11 Monday's going to trial, and because it is a second trial
12 some other judge had it. Would it help you gentlemen if we
13 did this: supposing we fix the date now of 4:00 o'clock
14 next Thursday, the 27th? You will be through your trial,
15 won't you?

16 MR. GORDON: Your Honor, I got a notice today
17 from Judge Tyler, I don't think that the appearance will
18 take too long next Thursday, but it is at 4:00 o'clock.

19 THE COURT: What is that, one of these
20 conferences with Judge Tyler?

21 MR. GORDON: Yes, the old cases.

22 THE COURT: I will have a word with Judge Tyler
23 if you want, and I think I could get that cleaned off for
24 you. I'm not sure I can do it, but what I would like to do
25 is to fix a date, and if you don't hear anything from me,

1 54Cmd

2 you will know we are going on. That would help you fellows,
3 which is what I'm trying to do.

4 Is that all right, gentlemen?

5 MR. STRUM: That's perfectly all right with us,
6 your Honor.

7 MR. DRAKE: Your Honor, at this time would you
8 like to receive the consents of Mr. McMahon and Mr. --

9 THE COURT: What I want you to do on that, they
10 have consented, are those orders you have got there?

11 MR. DRAKE: Yes, your Honor.

12 THE COURT: And they have got the consents of
13 the lawyers?

14 MR. DRAKE: Mr. Berger notarized Mr. McMahon's
15 signature on that one, your Honor.

16 THE COURT: Well, why don't you hand those up
17 and if I am satisfied with them I will just sign them and
18 file them and that's the end of that. There is no
19 objection to that, is there? I take it not. I will take
20 a look at them, if they are all right I will file them.

21 All right, thank you.

22 (Time noted: 4:35 p.m.)

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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John A. Friedman	521	547	568	
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David Lynn	729	758	761	
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EXHIBIT INDEX

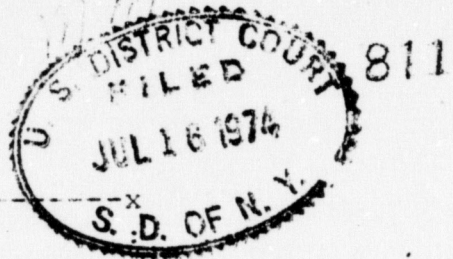
	<u>SEC</u>	<u>Identification</u>	<u>In Evidence</u>
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21	21	675	676
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24	24	804	
25	25	804	
26	26	804	

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Defendant		In
<u>Geon</u>	<u>Identification</u>	<u>Evidence</u>
A	313	314
B	411	427
C		518

Defendant		
<u>Edward & Hanley</u>		
A		638,698
B,	698	
C	698	
D	698	
F	707	708
G	717	718
H	720	721
I	720	721
J		792
K	795	796
L	798	

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK



3 -----
4 SECURITIES AND EXCHANGE COMMISSION :

5 vs. :

6 GEON CORP., et al. :

: 74 Civ. 1496
:

7 -----
8 Before: DUDLEY B. BONSAL, D.J.
9

New York, June 27, 1974;
2.00 P.M.

11 APPEARANCES:

12 FOR THE COMMISSION: Wallace L. Timmeny,
13 Michael Drake, Esq.,
14 Michael Perlis, Esq.,
Richard Rubin, Esq.

15 For Defendants Geon, Inc.
16 Neuwirth and Bloom: Kaye Schoeler Piernan
Ways & Handler, Esqs.,
17 By: Jay E. Strum, Esq., of Counsel.

18 For Defendant Rauch: Benjamin Zelermeyer, Esq.

19 For Defendant McMahon: Mark Berger, Esq.

20 For Defendant Edwards & Hanley: Evan L. Gordon, Esq.
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1 mp

2 (In open court.)

3 THE COURT: I appreciate your coming in early
4 today, gentlemen. These two criminal cases that I had
5 seemed to go faster than I had any reason to anticipate, so
6 I am glad to get moving on this one.

7 Now, as I recall it, the Commission had another
8 witness they wanted to call; is that correct?

9 MR. TIMMENY: That is correct, your Honor.

10 MR. PERLIS: That is correct, your Honor.

11 THE COURT: All right. Well, we will start
12 with that and we will proceed from there.

13 MR. PERLIS: Your Honor, prior to calling the
14 Commission's final witness, I would like to advise the
15 Court of an additional stipulation agreed to by counsel
16 for Edwards & Hanley and the Commission. That stipula-
17 tion is to the effect that on November 9, 1973, an
18 extension of time for payment of shares purchased in the
19 margin account of Louis Maione on November 2, 1973, was
20 requested, and that the reasons given on the request com-
21 as submitted by Edwards & Hanley was the inability to
22 contact Mr. Maione, or, the customer.

23 THE COURT: All right.

24 MR. GORDON: So stipulated.

25 THE COURT: You so stipulate.

1 mp

2 MR. GORDON: Yes, sir.

3 THE COURT: All right. Thank you.

4 MR. PERLIS: At this time, your Honor, the
5 Commission would call Mr. Ivan Boesky.

6 I V A N B O E S K Y, called as a witness on behalf
7 of the plaintiff, being first duly sworn by
8 the Clerk of the Court, testified as follows:

9 THE COURT: Proceed.

10 DIRECT EXAMINATION

11 BY MR. PERLIS:

12 Q Sir, would you please state your full name?

13 A Ivan Boesky.

14 Q Where are you employed, Mr. Boesky?

15 A The firm of Edwards & Hanley.

16 Q In what capacity?

17 A As, my present capacity is that of manager of
18 the Arbitrage Department.

19 Q Was that also your capacity during the period
20 October 1, 1973, until February 22, 1974?

21 A No.

22 Q During that time what was your function with
23 Edwards & Hanley?

24 A I was a general partner of the same firm.

25 Q What were your duties as general partner at

1 mp Bcesky-direct

2 that time?

3 A The same as my present duties as manager of the
4 Arbitrage Department.

5 THE COURT: In other words, you were in charge
6 as a general partner, you were in charge of the Arbitrage
7 Department, were you?

8 THE WITNESS: Yes, sir. That is correct.

9 THE COURT: All right.

10 Q How long have you been with Edwards & Hanley?

11 A Three years, approximately.

12 Q During this time when you managed the Arbitrage
13 Department, or were general partner in charge of the
14 Arbitrage Department, did you also handle customer accounts
15 as well?

16 A Only a few very select accounts who were active
17 in the area in which I was involved.

18 THE COURT: What area was that?

19 THE WITNESS: Arbitrage.

20 THE COURT: So you would select the accounts of
21 customers who were interested in arbitrage?

22 THE WITNESS: Yes, sir, that is correct.

23 BY MR. PERLIS:

24 Q Now, sir, during the later part of 1973 did
25 there come a time when you became interested in the

1 mp Roesky-direct
2 securities of Geon Industries as a possible arbitrage
3 situation?

4 A That's correct.

5 Q When was that?

6 A I think it was approximately the month of
7 December.

8 Q Was it the early part, latter part?

9 A I honestly don't remember, but I think it was,
10 I would say mid-December, in that area. Early to mid-
11 December.

12 Q Was there a --

13 THE COURT: How does one get interested in
14 arbitrage? Why did you become interested in Geon from the
15 point of view of arbitrage?

16 THE WITNESS: Well, because I recalled having
17 read on the news service, the Dow Jones News Service and
18 subsequently in the Wall Street Journal, the planned
19 acquisition, and whenever I see such an announcement I
20 turn my attention toward it because that is the nature of
21 the activity in which I am engaged.

22 THE COURT: You mean this is sort of trading on
23 the possibility, is that what it really is?

24 THE WITNESS: That is probably one of the best
25 summaries that I have heard of what really arbitrage is.

mp

Boesky-direct

THE COURT: It is just purely coincidental.

THE WITNESS: Normally when asked my explanations are lengthy and no one understands.

THE COURT: Well, if that's all right with you that's all right with me.

THE WITNESS: That's correct, sir.

THE COURT: All right.

BY MR. PERLIS:

Q At the time you became interested in Geon Industries as a possible arbitrage situation were you aware as to any accumulations of the stock of Geon Industries at the Hewlett office of Edwards & Hanley?

A Would you rephrase the question, please, sir?
I am sorry, I --

MR. PERLIS: Let me rephrase it.

Q Were you aware that certain registered representatives, or one particular registered representative at Edwards & Hanley had accumulated a large block of Geon shares for his own or for his customer accounts?

A At what point?

Q At the point he became interested in Geon as an arbitrage situation.

A No. At the point that I became interested was when I read the release, at that point I did not, you know,

1 mp

Boesky-direct

2 have such knowledge.

3 Q Did there come a time when you did become aware
4 of it?

5 A Yes.

6 Q When was that?

7 A That was subsequent, at some time during the
8 month of December, subsequent to such announcement when
9 I learned of it through a floor broker on the American
10 Stock Exchange.

11 THE COURT: Do you remember who that broker was?

12 THE WITNESS: He was our partner on the floor of
13 the American Stock Exchange, Mr. Shields.

14 THE COURT: Mr. Shields told you that?

15 THE WITNESS: Mr. Shields.

16 Q When did you first commence your purchasing
17 of securities of Geon Industries?

18 A It seems to me that went into the third, or
19 probably the fourth week of the month, the latter part of
20 the month of December.

21 Q Prior to your purchasing of Geon Industries
22 securities had you attempted at all to do any research
23 into the type of company Geon was, or to the prospects of
24 the acquisition by Burma H?

25 A Yes.

1 mp Boesky-direct

2 Q What steps did you take to do this research?

3 A The normal.

4 THE COURT: Well, I don't know what "normal"
5 is, so you can tell me.

6 THE WITNESS: Well, as a securities analyst,
7 which is my primary function, one looks at annual reports
8 and 10K's and 8K's and things of that kind to familiarize
9 themselves --

10 THE COURT: You have a file on the company, I
11 take it, that has these things?

12 THE WITNESS: You accumulate one.

13 THE COURT: Yes.

14 THE WITNESS: Not having had any contact with
15 it prior you begin to amass the data that is available.

16 BY MR. PERLIS:

17 Q Did you contact the Edwards & Hanley Research
18 Department as well to see what they had on the stock?

19 A I think that would probably be part of my
20 normal procedure.

21 THE COURT: You don't recall whether in this
22 instance you did?

23 THE WITNESS: No, sir.

24 Q Did you contact Mr. Rauch?

25 MR. GORDON: Your Honor, I object to that.

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Boesky-direct

Does he mean did he contact him for the purpose of gaining information, or does --

THE COURT: Well, I will let him answer.

When you became interested in Geon because of the arbitrage possibilities and you told us you collected data here about Geon, do you remember if you talked to Mr. Rauch at that time?

THE WITNESS: Sir, I spoke to Mr. Rauch, but I don't know at what time that was.

THE COURT: Well, was it about Geon?

THE WITNESS: It was about Geon and it was about the time that I learned from our floor broker that --

THE COURT: There was an accumulation?

THE WITNESS: (Continuing) There was an accumulation of stock.

THE COURT: And you think that was some time in December?

THE WITNESS: I think it was.

THE COURT: But after you talked to Shields, the floor broker, and found there was an accumulation out there in Long Island, then you spoke to Rauch; is that right?

THE WITNESS: Yes, sir.

THE COURT: All right.

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Boesky-direct

BY MR. PERLIS:

Q What was the substance of your conversation with Mr. Rauch?

A Well, the purpose of my bringing my interest to his attention was that in our activities, arbitrageurs, we would be normally buying stock. And typically customers, people who are simply investors, would be selling stock. So that a very normal kind of relationship is that if stock is for sale, if one is interested in buying it, that those two persons know of each other so that should they want to transact business they know where to find each other. That was the primary purpose of that.

Q As also part of your research activities did you contact anyone at Geon Industries?

A Yes.

Q With whom did you speak at Geon?

A I think I recall having spoken with Mr. Bloom, and I think I recall having spoken with a Mr. Neuwirth.

Q At the time did you know the positions each held with Geon?

A I wasn't very certain as to their relative positions.

THE COURT: As I understand it, there were two Neuwirths in Geon. There was an old gentleman. Was

1 mp

Boesky-direct

2 this an old gentleman you spoke to?

3 THE WITNESS: I honestly don't remember which
4 one I spoke to. He didn't sound old.

5 THE COURT: All right.

6 Q Do you recall whether the first name was either
7 George or Peter?

8 A Yes, I think it was either George or Peter.
9 I honestly don't recall which one it was. I think it was
10 George or Peter, yes.

11 THE COURT: I am sure it was either George or
12 Peter, but did he sound like an old man to you?

13 THE WITNESS: Not to me.

14 THE COURT: All right.

15 THE WITNESS: Somebody said I sounded like an
16 old man on the phone.

17 THE COURT: All right.

18 BY MR. PERLIS:

19 Q Prior to February 22, 1974, do you recall
20 approximately how many Geon shares you had accumulated
21 not only for the Edwards & Hanley arbitrage account, but
22 also for those few accounts that you managed as well?

23 A Prior to what time was that?

24 Q February 22, 1974.

25 A Well, as the Court so properly pointed out,

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Boesky-direct

Arbitrage activity is a trading activity. So that there was no one accumulation.

THE COURT: In other words, you would be buying and selling all the time?

THE WITNESS: Yes, that's correct.

THE COURT: So I think the question is whether if you can recall during this period between December and February 22, do you remember what the largest amount of Geon you might have had in the arbitrage account was?

THE WITNESS: Yes, I think so. I think 15,000 shares comes to mind.

THE COURT: 15,000 shares.

Q Did you ever speak to Mr. Rosenfeld during this period from late December, 1973, to February of 1974 with respect to whether or not the arbitrage department was in fact purchasing Geon Industries securities?

A I am sorry, to February or through February?

THE COURT: What he is asking you is, during this period did you speak to Mr. Rosenfeld -- as I recall, he was the manager of this branch --

THE WITNESS: Yes, I did.

Q -- and did you tell him about your interest in trading in Geon stock?

THE WITNESS: I think I did.

1 mp Boesky-direct

2 THE COURT: You think you did. All right.

3 Q Do you recall any conversation where Mr.
4 Rosenfeld asked if the arbitrage department was purchasing
5 Geon and you rightly told him that it was perhaps none of
6 his business?

7 A It wouldn't surprise me.

8 THE COURT: You might have told him that?

9 THE WITNESS: Yes.

10 THE COURT: Let me ask, when you talked, what
11 did you and Rauch talk about when you talked about Geon
12 Industries? Do you remember?

13 THE WITNESS: Yes, I think so. When we talked
14 about Geon we talked about the fact that I am a buyer of
15 the security, and should he want to sell the security I
16 would appreciate him advising me of that interest so that
17 perhaps we could do a cross-transaction which would be
18 basically one firm represented on the buy and sell side
19 of the security.

20 Q Did you and Mr. Rauch discuss at all what if
21 any contacts Mr. Rauch might have had at Geon Industries?

22 A No.

23 Q Did you and Mr. Rauch discuss at all what if
24 any prospects or what prospects there were for the
25 consummation of the Burma acquisition?

1 mp Boesky-direct

2 A No.

3 THE COURT: I think what he is really asking you,
4 if we go back to my definition of trading on possibilities
5 in the arbitrage department, did you discuss with Rauch
6 what he thought the possibilities were?

7 THE WITNESS: No, I -- no. I mean, not
8 really.

9 THE COURT: Well, not really --

10 THE WITNESS: I will define that. I am sure
11 that in conversation he probably said, do you think the
12 merger will go through, and I said, I hope so, or, I think
13 so.

14 THE COURT: Well, I am not asking you that.
15 Did he tell you such things as, "I had dinner with the old
16 man, or lunch with the old man, and the merger is going
17 through"?

18 THE WITNESS: Oh, no.

19 THE COURT: He never told you anything like that?

20 THE WITNESS: Oh, no.

21 THE COURT: All right.

22 BY MR. PERLIS:

23 Q Mr. Boesky, at any time during this period from
24 the end of December to February 22, 1974, have you ever
25 spoken or met with a gentleman named Barbanell?

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Boesky-direct

2 A I have spoken with a gentleman by the name of
3 Barbanell.

4 Q Do you know who Mr. Barbanell is?

5 A Yes, I do.

6 Q Who is he?

7 A He is associated with the firm of Loeb
8 Rhoades. He is an investment banker.

9 Q Do you also know whether or not he was at
10 that time a director of Geon?

11 A I believe he was.

12 Q On how many occasions did you speak with Mr.
13 Barbanell?

14 A Once or twice.

15 Q Do you recall when the first time was?

16 A Probably when I was familiarizing myself with
17 the company, so that would have been, just guessing now,
18 I don't know, December, January.

19 Q What was the substance of that conversation, if
20 you recall?

21 A Primarily the understanding of what Geon is.
22 Remembering that I had no prior knowledge of what Geon was
23 before the announcement, that I learned about the company's
24 intended plans of a merger. So that I really wanted to
25 understand the company more.

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Boesky-direct

Q Did there come a time when you spoke to Mr. Barbanell again in and about the week of February 11, 1974?

THE COURT: I didn't get that. What date?

MR. PERLIS: February 11, your Honor.

A As I mentioned, I spoke with him once or twice, and I don't really recall the time frames around those calls.

Did you ever have a conversation with Mr. Barbanell wherein Mr. Barbanell informed you of the date or existence of a Geon board meeting in February, February 21, 1974?

A Not to my recollection.

Q You indicated that your first conversation with Mr. Barbanell was generally to familiarize yourself with Geon, that you had not had much knowledge about what type of company Geon was; is that correct?

A I think that's correct.

Q What was the substance of your second conversation, if you can --

A More of the same.

Q Did you become aware from any source, Mr. Boesky, that there was to be a Geon board of directors meeting on February 21, 1974?

A No, I don't remember that.

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Boesky-direct

THE COURT: You don't remember?

THE WITNESS: No, sir.

THE COURT: You might have or you might not, you just don't remember now.

THE WITNESS: I don't remember knowing that there was a meeting at that time.

Q At the time that you started purchasing securities of Geon Industries, toward the end of December of 1973, were you aware as to whether or not Mr. Rauch and certain other registered representatives at the Hewlett office were still soliciting their customers to purchase Geon Industries?

A No.

Q Did you ever ask Mr. Rauch?

A No.

Q I would like you to recall for a moment the morning of February 22, 1974.

A Yes.

Q Do you recall at what time you arrived at your office that morning?

A Usually about seven in the morning.

THE COURT: Do y i? I didn't know you fellows got to the office at seven in the morning.

THE WITNESS: Most don't.

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THE COURT: Most don't. All right.

THE WITNESS: For me that's usual.

Q Had you planned on purchasing additional Geon securities on that date?

MR. GORDON: Your Honor, I object to that.

THE COURT: I think I will sustain the objection to the form of that question.

You tell us you arrived at 7.00 a.m. on the morning of February 22, and without going into all the things that happened, tell us all the things you recall that happened that day regarding Geon.

THE WITNESS: Well, I recall that when the opening of the market came, this was around 10 o'clock, that the shares of Geon were held up for trading.

THE COURT: At that time do you recall whether you had any orders in to buy or sell Geon?

THE WITNESS: I think I had orders in to buy Geon.

THE COURT: You think you had orders in to buy?

THE WITNESS: Yes, sir.

THE COURT: Do you recall how many shares you had orders in to buy, approximately?

THE WITNESS: Well, I don't know exactly what was on the order ticket, but I think that probably my

1 mp Boesky-direct
2 interest was in the area of 10,000 shares or something
3 like that.

4 THE COURT: 10,000 shares?

5 THE WITNESS: I think so.

6 THE COURT: All right.

7 BY MR. PERLIS:

8 Q Would you continue, please?

9 A With what?

10 Q The events of February 22 as regarded Geon.

11 THE COURT: Yes, you got to where the trading
12 was delayed on Geon.

13 A Oh, yes. Well, trading was delayed, and of
14 course that prompts the question as to why is that?
15 And so I remember asking my floor broker to --

16 THE COURT: Is this Mr. Shields?

17 THE WITNESS: No, sir. I never use the -- I
18 shouldn't say "never," rarely use the services of the
19 Edwards & Hanley floor brokers. I use the services of an
20 independent, what is known as a \$2 floor broker.

21 THE COURT: Do you want to keep the possibilities
22 to yourself, is that --

23 THE WITNESS: Well, primarily it's not the best
24 use of his time, because he is servicing our retail and --

25 THE COURT: All right. Then you called this

1 mp Boesky-direct

2 two-buck broker. What was his name?

3 THE WITNESS: Mr. Robert Roberto.

4 THE COURT: All right, Robert Roberto.

5 THE WITNESS: And I talked with him and asked him
6 if he would go out there on the floor of the American
7 Stock Exchange and find out why they are holding up
8 trading. And he returned to the phone and said, "Well,
9 there seems to be a preponderance of orders. Whenever
10 there's an imbalance that's --

11 THE COURT: What is a preponderance of orders?

12 THE WITNESS: Well, that means, another definition,
13 an imbalance, being an auction market where there are
14 excessive amounts of buy orders and not enough people to
15 sell it to, or the opposite, they can't open the stock
16 because they can't pair off the demand.

17 THE COURT: Well, did he tell you what this
18 imbalance was?

19 THE WITNESS: At first he did not, and then he
20 did. And that information came to me as an imbalance of
21 sell orders.

22 THE COURT: And that meant to you more to sell
23 than buy and they couldn't cover?

24 THE WITNESS: Yes, sir. So that was very
25 strange.

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Boesky-direct

2 He then told me, I believe, that the American
3 Stock Exchange was making inquiry of the company to
4 determine whether or not there was any particular reason
5 why there would be this preponderance, or if there was
6 any particular news, et cetera, before they would open
7 the stock.

8 I think as time moved on it was concluded by
9 the American Stock Exchange --

10 THE COURT: You are on the phone with this fellow
11 Roberto; is that right?

12 THE WITNESS: Yes, sir.

13 THE COURT: This is what he told you?

14 THE WITNESS: Yes, sir.

15 THE COURT: Well, then, I suppose you hung up
16 at that point. Did he call you back?

17 THE WITNESS: Well, my interest is not just one
18 question. I will ask him again, anything new now?

19 THE COURT: What did you do, call him again?

20 THE WITNESS: I would do that, yes.

21 THE COURT: Call him again and ask what --

22 THE WITNESS: Any new developments, any anything?

23 THE COURT: So you called him later on and
24 said, "Anything new"?

25 THE WITNESS: Yes.

1 mp Boesky-direct

2 THE COURT: What did he tell you?

3 THE WITNESS: By that time I think there had been
4 some discussion by the American Stock Exchange with the
5 company, and I guess in their judgment they felt there
6 was no material --

7 THE COURT: Don't guess.

8 THE WITNESS: Well, that's what I was told.

9 THE COURT: You were told that?

10 THE WITNESS: Yes.

11 THE COURT: All right. You were told by this
12 fellow Roberto that as far as he knew there were no new
13 developments. And what did --

14 THE WITNESS: As far as he knew, and the reason
15 that he believed that was that to his best knowledge the
16 American Stock Exchange had made inquiry to that and had
17 so concluded.

18 THE COURT: All right.

19 THE WITNESS: And then it was subsequent to that,
20 not too long after, that I believe they resumed -- I
21 shouldn't say resumed -- they commenced trading in the
22 securities of Geon Industries.

23 THE COURT: All right.

24 BY MR. PERLIS:

25 Q Did there come a time that you became aware

1 mp

Doesky-direct

2 that there was a certain selling activity going on in Geon
3 from the Hewlett office of Edwards & Hanley?

4 A There came that time shortly after trading
5 commenced.

6 Q What did you do when you found that out?

7 A I got on the phone, after learning it, calling
8 the branch where I believed the stock would have been coming
9 from.

10 THE COURT: What branch was that?

11 THE WITNESS: Which was the same Hewlett branch.

12 THE COURT: Hewlett?

13 THE WITNESS: Yes, sir.

14 BY MR. PEPLIS:

15 Q Did you speak to Mr. Rauch?

16 A I did.

17 Q Did you admonish Mr. Rauch as to --

18 THE COURT: Let's find out what he said to
19 Rauch. I will figure out whether he was admonished or not.

20 What did you say to Mr. Rauch?

21 THE WITNESS: Well, I said, Mr. Rauch, you
22 said in our prior conversation that if you had stock for
23 sale you would tell me so that we could do a cross-trans-
24 action, and I told you that if you did know of that to please
25 call me, and you said you would. Yet I see stock being
sold on the American Stock Exchange floor. Is it yours?

1 mp Boesky-direct

2 He said, yes, it is. I said, "Well, if it is
3 yours, why didn't you tell me that?"

4 He said, "Well, it was just a small amount."

5 And I said, "That doesn't matter, that was not
6 our agreement. Our agreement was that if you had stock to
7 sell you would call me, and you didn't do it."

8 So I was angry.

9 THE COURT: All right.

10 Q Would you call his conduct unprofessional?

11 THE COURT: I don't care whether you would call
12 his conduct unprofessional. You were mad. You gave him
13 hell.

14 THE WITNESS: Well, I did it in a businesslike
15 manner.

16 THE COURT: Well, all right. Businesslike
17 manner of saying he was unbusinesslike?

18 THE WITNESS: Something like that.

19 THE COURT: Something like that. All right.

20 BY MR. PERLIS:

21 Q Did you also speak to Mr. Rosenfeld shortly
22 thereafter?

23 A Yes, I did.

24 Q What was the substance of that conversation?

25 A Mr. Rosenfeld learned of my being angered,

1 mp Boesky-direct
2 and as the manager of that office --
3 THE COURT: Did he call you, or --
4 THE WITNESS: Yes, sir.
5 THE COURT: He called you after you talked to
6 Rauch?
7 THE WITNESS: He did.
8 THE COURT: So he called you and --
9 THE WITNESS: He called me with a tone of
10 apology, I am sorry it happened, you're right, and that
11 sort of thing.
12 BY MR. PERLIS:
13 Q Did there come a time when Mr. Rauch sold to the
14 Edwards & Hanley, or crossed with the Edwards & Hanley
15 Arbitrage Department 5000 shares of Geon on February 22?
16 A 4000 shares of Geon on February 22.
17 Q Would you explain that transaction, please?
18 A Yes. After having had the prior conversation
19 Mr. Rauch called me, oh, within a few moments, to say,
20 "Well, I think I have some more stock for sale." And I
21 said, "Good, I'd like to buy it."
22 He said, "Good. What do you want to pay for it?"
23 And I said, "I will pay you, I think" -- I have
24 forgotten the number -- I said, "What do you want to sell
25 it for? I think at that time he said, "14 or 14-1/4."

1 mp Boesky-direct

2 I said, "No dice. I will pay you 13-3/4 for your stock.

3 How much do you have for sale?" "I have 5000 for sale."

4 I said, "Great, we can do a transaction."

5 Did you in any way attempt to pressure Mr.
6 Rauch into selling his stock, his Geon stock?

7 A Well, I just recited my conversation. You can
8 interpret that any way you want to, but he called me offering
9 me the stock.

10 Q When you stock to Mr. Rosenfeld after first speak-
11 ing with Mr. Rauch, did Mr. Rosenfeld indicate to you that
12 he was also selling Geon securities?

13 A I had no knowledge of that.

14 THE COURT: He didn't say anything about it?

15 THE WITNESS: No, sir.

16 Q Do you recall whether you had any other con-
17 versations with Mr. Rauch on February 22, 1974?

18 A Well, after we, I think we did other trans-
19 actions, of which I bought, incidentally, 4000 shares.
20 The reason for that is there were 1000 shares that were
21 bid for outside of me, and under the rules of the Stock
22 Exchange that person has to participate at that price.

23 THE COURT: When you say you bought 4000 shares,
24 was that for arbitrage customers, or was it for the Edwards
25 & Hanley arbitrage account, or what was it for?

1 mp Boesky-direct

2 THE WITNESS: I think it was Edwards & Hanley
3 arbitrage account.

4 THE COURT: It was. It wasn't bought for
5 customers, you bought it --

6 THE WITNESS: No. Arbitrage customers, as I
7 described to you earlier in our conversation, had pur-
8 chased small quantities of Geon. But I don't think they
9 were part of that.

10 THE COURT: All right.

11 BY MR. PERLIS:

12 Q Did you ever speak with Mr. Rauch on February
13 22, 1974, subsequent to this transaction involving the
14 four or five thousand shares and inform him that there
15 was something wrong with Geon's figures, don't worry, but
16 the deal will go forward at a lower price?

17 A No.

18 Q Did there come a time, either in December or
19 January or February, that you informed Mr. Rosenfeld,
20 or advised Mr. Rosenfeld, with regard to the suitability
21 of Geon for retail customers?

22 A Would you mind repeating the question, sir?

23 Q Yes.

24 Did there come a time, during the period of your
25 interest in Geon, commencing in December of 1973, when

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Boesky-direct

2 you spoke with Mr. Rosenthal regarding the suitability
3 of Geon for retail customers?

4 A No.

5 Q Did you ever have any conversation with Mr.
6 Rosenthal to the effect that the last two points in an
7 arbitrage situation belonged to the Arbitrage Department?

8 A I did not have such a conversation with Mr.
9 Rosenthal.

10 Q Did you ever have one with Mr. Edwards?

11 A That's an inaccurate description of a conver-
12 sation along those lines that I had with Mr. Edwards.

13 Q What was that conversation, sir?

14 A If you understand the purpose of the arbitrageur,
15 he really offers his services to the general public who
16 are not willing, or able, to take risks for very small
17 profit opportunities. The arbitrageur stands there ready
18 to take risks for small profit opportunities. That is his
19 function. And normally --

20 THE COURT: Small profit in short term.

21 THE WITNESS: Short term. Sometimes short
22 term.

23 THE COURT: Hopefully.

24 THE WITNESS: Hopefully.

25 And normally it would not be prudent for a
customer, or an individual whose business this is not,

mp Boesky-direct

to incur such risks. Normally that customer would not have the capital or the -- or whatever to sustain that kind of activity.

So that it would be good business sense, and that's what I communicated to Mr. Edwards, that normally speaking customers probably shouldn't try to get the last little bit normally speaking that's the function of the arbitrageur, but obviously that's in their judgment and that's not a judgment that we would make for them.

Q Is this something that you requested Mr. Edwards to convey to either Mr. Rauch or Mr. Rosenfeld?

A Not at all.

Q I believe you testified that on the morning of February 22 that at about the opening you had orders to buy about 10,000 shares of Geon?

A Would you repeat that, please?

THE COURT: He wants to know whether on the morning before the market opened did you have buy orders for 10,000 shares of Geon?

A I think when I mentioned the number 10,000 shares you asked me sort of what I might have had in mind. I don't think that the orders were so written. I don't recall how the orders were written.

Q Well, let me ask you this: were the orders

1 mp Boesky-direct

2 that you had in on February 22, 1974, prior to the opening
3 of the market substantially larger in numbers than you
4 had for example that prior week?

5 A I don't remember. May I just -- I just
6 don't remember.

7 THE COURT: I had the impression that you told
8 us a while ago that at the opening on that day you did
9 have orders to buy some 10,000 shares. Am I wrong in that?

10 THE WITNESS: I had orders down, sir, and I
11 think that my desire was to buy that --

12 THE COURT: What do you mean by "orders down."
13 Did you have orders or didn't you?

14 THE WITNESS: Yes, I had orders.

15 THE COURT: All right.

16 THE WITNESS: I had orders, but I just wanted to
17 clarify what is meant by having an order.

18 THE COURT: All right.

19 THE WITNESS: That is, that you may have an
20 order that you have given the person to buy a particular
21 amount, that would be the orders. But you may have in
22 your mind the full preparedness to buy substantially more
23 than that as the moments develop.

24 THE COURT: Well, out of the 10,000 shares how
25 much was in your mind and how much did you have orders

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for?

THE WITNESS: I don't remember.

THE COURT: Well, could you make an estimate?

THE WITNESS: Probably most of it. I just
don't --

THE COURT: Most of it you had orders for?

THE WITNESS: I would guess so.

THE COURT: A small part was in your mind?

THE WITNESS: I would think so.

THE COURT: All right.

MR. PERLIS: I have nothing further, your Honor.

THE COURT: All right.

MR. GORDON: I have no questions, your Honor.

THE COURT: No questions. All right.

Have you any questions, Mr. Strum?

MR. STRUM: I have no questions, your Honor.

THE COURT: All right. Are there any other
questions anybody?

All right, thank you, Mr. Boesky.

(Witness excused.)

THE COURT: Does the SEC have any other witnesses?

MR. PERLIS: No, your Honor.

THE COURT: Are you resting?

MR. PERLIS: Your Honor, prior to resting we

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2 would tender to the Court a document captioned Pages
3 Relied On In Investigative Transcripts of Certain
4 Witnesses.

5 We will call to the Court's attention those
6 particular pages are the transcripts of certain parties
7 and witnesses in these proceedings on which the Commission
8 relies and would ask the Court to examine.

9 THE COURT: Well, whose depositions do you have
10 in mind?

11 MR. PERLIS: Mr. McMahon, Mr. Rauch, Mr.
12 Neuwirth, Mr. Bloom and Mr. Friedman.

13 THE COURT: I think you gentlemen bridged the
14 question of the depositions of people who did not testify
15 at the trial. And I think you have opposed that, you
16 opposed my receiving those transcripts, Mr. Strum.

17 MR. STRUM: Yes, I do, your Honor.

18 THE COURT: I have considered your memoranda on
19 that, and as I understand it, when these men gave their
20 statements to the SEC there was no cross-examination.
21 Am I right in that?

22 MR. PERLIS: That is correct, your Honor.

23 THE COURT: Secondly, so far as Rauch and McMahon
24 who is the other one?

25 MR. PERLIS: The two relating to the memorandum,

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2 your Honor, are solely Mr. Rauch and Mr. McMahon.

3 THE COURT: They both appeared on this witness
4 stand and both took the Fifth Amendment; is that correct?

5 MR. PERLIS: That is also correct, your Honor.

6 THE COURT: I also mentioned earlier, gentlemen,
7 as I see this case it seems to me what we are doing here
8 at this preliminary hearing, or preliminary injunction,
9 is really pretty much the entire case. I don't know what
10 more we have to bring in after we have been all through it,
11 and I think for those reasons I am not going to take, or,
12 receive those statements.

13 I think I have heard a great deal here and I
14 think I can decide it on the basis of what I have heard,
15 and I don't know where I could draw any inferences from
16 something one of these people who took the Fifth might
17 have said to the SEC, and in doing this I might be quite
18 unfair to somebody who didn't have an opportunity to cross-
19 examine him.

20 So I don't think I will receive them.

21 MR. STRUM: Am I correct, your Honor, I think
22 I understood at the last session that you already did
23 rule that with the people who did testify --

24 THE COURT: That's right, that's another thing.

25 MR. STRUM: You were rejecting their transcript.

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2 THE COURT: People who testified, there is no
3 need for it because there was an opportunity for cross-
4 examination here and I don't have to read all the same
5 thing I have heard in the courtroom. That's right.

6 All right. Well, now, as I recall it,
7 Mr. Gordon, you had rested, didn't you?

8 MR. GORDON: Yes, your Honor.

9 THE COURT: Now it is up to Mr. Strum.

10 MR. STRUM: I have one witness, your Honor.
11 Mr. Lewis Korman.

12 THE COURT: All right.
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2 L E W I S K O R M A N, called as a witness on
3 behalf of the defendants, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STRUM:

7 Q Mr. Korman, by whom are you employed?

8 A By the law firm of Kaye, Schoeler, Fierman,
9 Hays & Handler.

10 Q In what capacity?

11 A I am an associate with the firm.

12 THE COURT: How long did it take you to learn
13 that name?

14 THE WITNESS: A while, your Honor.

15 THE COURT: Quite a while. All right.

16 You have got it well.

17 THE WITNESS: I practiced.

18 THE COURT: All right.

19 Q How long have you been employed by Kaye,
20 Schoeler, Mr. Korman?

21 A Approximately five years.

22 Q In which department do you work?

23 A The Corporate Department.

24 THE COURT: Does that mean you have got to
25 provide all these registration statements, prospectuses

1 mp Korman-direct

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2 and things like that?

3 THE WITNESS: That's right. And I reviewed the
4 purchase agreement that was discussed in court several
5 times.

6 THE COURT: Reviewed the purchase agreement
7 between Geon and Burma?

8 THE WITNESS: Yes, sir.

9 THE COURT: All the drafts?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right.

12 BY MR. STRUM:

13 Q Therefore you have functioned from time to time,
14 Mr. Korman, on matters involving Geon?

15 A For approximately four years.

16 Q There has been evidence at this hearing that
17 on December 19, 1973, the Alpert's purchased some Geon stock.
18 My question is this, Mr. Korman:

19 On December 18, 1973, the preceding day, did
20 Geon issue a press release?

21 A Yes, the company did.

22 MR. STRUM: May I please have this marked for
23 identification.

24 (Defendant Geon Exhibit D marked for
25 identification.)

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Korman-direct

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2 BY MR. STRUM:

3 Q Mr. Korman, I show you what has been marked as
4 Exhibit Geon D for identification, and I ask you, is this
5 a copy of the press release issued by Geon on December 18,
6 1973 (handing)?

7 A Yes, it is.

8 THE COURT: How do you know?

9 THE WITNESS: Well, I remember it being released,
10 your Honor, and I remember what the substance of it was.

11 THE COURT: Who released it?

12 THE WITNESS: We had called it on the telephone --
13 my recollection is either that Jack Friedman or Joe Connolly
14 telephoned it to the Dow Jones. John Larkin, who is
15 Mr. Connolly's son-in-law, then confirmed that it ran on
16 the Dow Jones, and we had put a copy in the file and had
17 indicated on the top that it was dictated to the Dow
18 Jones, and Mr. Larkin confirmed that the release ran this
19 way, and we put it in our files.

20 THE COURT: Have you seen this?

21 MR. TIMMENY: Yes, your Honor. We have no
22 objection, your Honor.

23 THE COURT: Are you offering this?

24 MR. STRUM: Yes, I am going to offer it, your
25 Honor.

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Korman-direct

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2 (Defendant Geon Exhibit D received in
3 evidence.)

4 BY MR. STRUM:

5 Q Mr. Korman, did you attend the meeting of the
6 board of directors of Geon held on February 21, 1974?

7 A Yes, I did.

8 Q Prior to that meeting did you have a discussion
9 with any attorney representing Burma on the subject of a
10 press release?

11 A Yes, I did.

12 Q Would you tell me, please, with whom you had
13 such a conversation and the substance of that conversation?

14 A Several days prior to the board meeting I had
15 a telephone conversation with Paul Ford, who is an
16 associate at Simpson, Thacher, and I would characterize
17 him as my contemporary, the person with whom I had worked
18 on the transaction during the preceding six to eight weeks.

19 THE COURT: Simpson, Thacher were the attorneys
20 for Burma; is that correct?

21 THE WITNESS: Yes, they were, your Honor.
22 They still are.

23 A (Continuing) I was probably almost calling him
24 two or three times a week, or he was calling me. At that
25 point in time we had the agreement printed, and it was
finished in form that was satisfactory to my firm and to

1 Simpson, Thacher, and we were both prepared at that stage
2 to recommend to our respective clients that they approve
3 it.
4

5 I was also at that stage receiving disclosure
6 schedules from Geon which I was reviewing and keying to
7 the various sections of the agreement and forwarding them
8 to Mr. Ford for his review.

9 At that point in time I had told him that we
10 had scheduled a Geon board meeting for Thursday, February
11 21 to approve the agreement. I think I had told him that
12 the day before. He had indicated to me that he would
13 arrange at about that time, February 21, or a day after,
14 to have the Burma board in England approve the agreement.
15 If both those things happened, I would continue to give
16 him schedules which he would review, and he hadn't seen
17 before, and he was hopeful that he could finish the review
18 by Monday or Tuesday of the following week, in which case
19 the agreement might be signed late Tuesday or early Wed-
20 nesday.

21 During the course of this telephone conver-
22 sation he had inquired of me as to whether we had any
23 plans to put out a press release after Geon approved
24 the agreement. I told him that we didn't, that I didn't
25 think it merited it since he hadn't reviewed the schedules

1 yet and that Burma had not approved the agreement yet
2 and that we were planning to put out a release immediately
3 following the execution of the agreement.
4

5 He stated to me that that's what he thought
6 our position would be, however, someone at Burma had asked
7 because they like to review all press releases before they
8 go out, and he wanted to be positive before he told his
9 client that we weren't going to be putting out a press
10 release.

11 After I got off the telephone with him, I went
12 to see Jack Friedman, who is the partner I worked with on
13 Geon, I told him of my conversation. He confirmed to me
14 that what I had told Mr. Ford was what we would recommend
15 to the client, and we had a brief discussion that day with
16 Mr. Bloom just telling him that we didn't think a press
17 release should be issued after the board approves the agree-
18 ment.

19 THE COURT: You said it shouldn't be put out --
20 you just said, shouldn't put out a press release after the
21 Geon board --

22 THE WITNESS: That's right, on February 21,
23 that Thursday.

24 Q Mr. Korman, there has been testimony at this
25 hearing about a \$314,000 error at the East Coast warehouse
of Geon, which error was discovered on February 21.

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Korman-direct

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2 Was that error discussed at the February 21
3 board meeting?

4 A Frank Bloom mentioned it to me and Mr. Friedman
5 prior to the meeting, and he repeated it at the formal,
6 what I would call the formal commencement of the meeting.
7 But he spent very little time on it because he said that
8 after correcting for this error he was still \$175,000
9 ahead, approximately that was the number he used, ahead at
10 the East Coast warehouse of what he needed from the ware-
11 house to make the earnings requirement in the Burma
12 contract, so that they couldn't walk away before the closing,
13 and also ahead of what he had anticipated.

14 And that his major concern was the fact that the
15 branches were coming up \$850,000 short and any discussions
16 of numbers centered on that and not the \$314,000.

17 Q Mr. Barbanell has testified that there was a
18 discussion at the February 21, 1974, Geon board meeting
19 to the effect that it was common knowledge in Wall Street
20 that the board meeting was being held. Is that true?

21 A There was no such discussion.

22 Q After the trading was halted in Geon on Friday,
23 February 22, Mr. Korman, did you have occasion to speak
24 to Mr. Barbanell?

25 A Yes. He was in contact with our office that day

several times, a couple of times before trading was halted and a couple of times after. And I spoke to him once or twice after the trading was halted.

Q Directing your attention, Mr. Korman, to a conversation with Mr. Barbanell --

THE COURT: Excuse me. Wait a minute.

You say after the trading was halted you had a conversation with Barbanell?

THE WITNESS: Yes, I did.

THE COURT: How come?

THE WITNESS: Well, he called us when he found out that the open was delayed.

THE COURT: He called you?

THE WITNESS: He called Mr. Friedman, and I was in Mr. Friedman's office. I was in there the whole morning. I started out with making a call to France on an unrelated matter for a different client.

When he had called after the trading had halted, either I picked up the phone -- Mr. Friedman has two phones in his room -- or we put him on the speaker phone, I don't remember which. And he wanted to know whether we knew that the trading was delayed. And we indicates, yes, and we just had a brief discussion at that point.

He said he would be back later, you know, if anything unusual had happened --

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Korman-direct

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2 THE COURT: What was the brief discussion?

3 THE WITNESS: Well, he asked us whether we knew
4 the trading had halted. We said, yes. At that point in
5 time I believe I had already spoken to Frank Bloom who had
6 relayed his conversation with Randy Gromet to me, and I
7 relayed it back to Mr. Barbanell. And he also knew that
8 the trading had halted and it had opened. It was delayed
9 and it had opened.

10 We had discussed the fact that it was delayed
11 and opened, and we generally discussed the fact that it
12 appeared that everything was going smoothly. In other
13 words, it had been delayed, but it had opened, I think,
14 only off a half or something like that on very heavy volume
15 which meant that there was strong buy pressure beneath the
16 sell pressure and that would indicate that there was nothing
17 untoward happening. The night --

18 THE COURT: That is what you talked about with
19 Mr. Barbanell?

20 THE WITNESS: Yes. And the night before we
21 had also discussed that the stock had closed at 12-7/8,
22 the deal, I think, was at 16-1/2, and it struck Mr. Barbanell
23 and everyone else that discussed that, it was Mr. Friedman
24 and me, that that was sort of high in an arbitrage position
25 since we hadn't even announced an agreement being signed,
and that there would probably be profit-taking the next

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Korman-direct

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So the discussion we had was, well, the profit-taking that we expected occurred, and nothing unusual seems to be happening. And that was basically the telephone call we had.

When trading was -- he called us later before trading was halted to say that, "Boy, you know, I noticed that the price is going down rapidly on heavy volume. We said to him that we noticed that also, and we put in a call to Bernie Maas at the American Stock Exchange to halt trading and we are expecting to receive word on it momentarily.

So we said, "We don't want to tie up the telephone, we will hang up with you." When trading was halted, he then called us back to discuss what had happened on the telephone conversation with representatives of the American Stock Exchange.

At that point in time I was the only one who was speaking to him and I had mentioned to him that we had received an unusual amount of telephone calls that morning after the trading was delayed from brokerage firms. Our firm, myself in particular, Mr. Friedman and other partners during the course of the past several weeks had received calls, but maybe one or two a day. We had literally

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Korman-direct

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received maybe 15 telephone calls that morning after the trading had opened, and I mentioned to him that I was really surprised about it.

He said to me, well, maybe some of them knew about the meeting. I said, "What do you mean?"

And he said, "Well, you know, I may have mentioned it to five or six people, I don't remember the exact, you know, number."

THE COURT: This is again Mr. Barbanell?

THE WITNESS: Right. That the meeting was going to take place. I didn't say anything to him at that point. I was a little concerned that he, you know, told me about it and I had gone to see Joe Connolly, who is the senior partner in the firm on this matter and related it to him. Because we had no way to account for all the telephone calls we had received.

This conversation was also, before I forget, he mentioned this also at a Sunday board meeting that we had on February 24. He repeated what he had told me. Because at that meeting people in the company had said that they were bombarded by calls that Friday morning. And Mr. Bloom related a story of his secretary literally being in tears because one of the people that tried to reach him was very abusive to her.

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2 BY MR. STRUM:

3 Q Mr. Korman, you attended a meeting Monday
4 morning at the American Stock Exchange on February 25,
5 did you not?

6 A Yes, I did.

7 Q Did you tell the American Stock Exchange people
8 the fact that Mr. Barbanell had told you on Friday that he
9 had told five or six people about the impending board meet-
10 ing?

11 A Yes, I did. They had asked us, and I think
12 it was Dave Shukovsky specifically, whether we knew whether
13 anyone in Wall Street had known of the meeting, or anyone
14 had told anyone else about the meeting. And I told Mr.
15 Shukovsky that Mr. Barbanell informed me that he had told
16 five or six brokerage -- people at brokerage firms about it.

17 THE COURT: Who is Shukovsky again?

18 THE WITNESS: He is, I would call it, internal
19 general counsel for the exchange.

20 Q Subsequent to that meeting at the American Stock
21 Exchange, Mr. Korman, did you inform Mr. Barbanell that
22 you had told the American Stock Exchange what he had said
23 to you?

24 A Yes, I did. Mr. Shukovsky had given us a list
25 of the -- a preliminary list of the people who had sold

1 stock on the morning of February 22, and he had asked us
2 whether we would undertake to question all of the directors
3 as to whether they had any knowledge, or relationship with
4 any of the sellers.
5

6 We agreed to do that, and in furtherance of
7 that I called Mr. Barbanell and I went over the list with
8 him. After I did that he asked me to review what had
9 transpired at the meeting with the American Stock Exchange,
10 and during the course of my review I told him that the
11 Exchange had asked the question concerning knowledge of
12 the board meeting, and I told them that he had informed
13 me he had told five or six people at brokerage firms
14 about the meeting.

15 Q What did Mr. Barbanell say to you?

16 A He said, "Thanks for volunteering the informa-
17 tion."

18 Q Now I would like to go back for a moment to
19 Friday, February 22.

20 Did you have occasion to speak to Mr. Bloom
21 that morning?

22 A Yes, I did.

23 Q Did you have occasion to speak to Mr. Bloom
24 after he had spoken to Mr. Gromet?

25 A Yes, I did. I was in Mr. Friedman's office,

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Korman-direct

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2 the phone rang and his secretary announced it was Mr. Bloom
3 on the phone and Jack requested that I take the call.

4 I spoke to Mr. Bloom and he informed me that
5 he's just gotten off --

6 MR. TIMMENY: Objection, your Honor. I just
7 want to point out one thing. I asked Mr. Bloom on the
8 direct testimony about the substance of his conversation
9 with Mr. Korman. At that time Mr. Strum objected on the
10 basis of the attorney and client privilege.

11 Now, if he is going to go into the conversation
12 now, I think there is a little bit of inconsistency here.
13 And I think unfairness, too, because Mr. Bloom is no longer
14 available.

15 THE COURT: What do you say to that, Mr. Strum?

16 MR. STRUM: I would be glad to address myself to
17 that, your Honor.

18 When I made my objection, at that time it was
19 prior to the time Mr. Gromet testified. Mr. Gromet later
20 took the witness stand, made some statements which were
21 themselves contradicted by Mr. Foster, and now I think
22 since that is true with my present state of knowledge of
23 the record I think it should be discussed what Mr. --

24 THE COURT: Well, I am going to sustain the
25 objection. I am going to hold you to that. I will

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Korman-direct

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sustain the objection.

MR. STRUM: I would just like to point out, your Honor, that when I made my objection I had not heard Mr. Gromet's testimony.

THE COURT: Well, you have made that point. All right.

BY MR. STRUM:

Q Mr. Korman, directing your attention to Thursday, February 28, were you at the offices of Kaye, Schoeler on that day?

A Yes, I was.

Q Did there come a time when Mr. Friedman called in from Geon's office?

A Yes, he did.

Q At the time Mr. Friedman called in who were you with?

A I was with Joseph Connolly and Saul Kronoveth, both partners of the firm.

Q Did you speak to Mr. Friedman?

A Yes, I did.

Q Will you tell me, please, what Mr. Friedman said to you and what you said to him in that conversation?

A Mr. Friedman had gone out to Geon that morning to interview James McMahon about the events of the preceding week, specifically February 21 and February 22. He had

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Korman-direct

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called earlier in the day to say that McMahon had not come in but had telephoned Mr. George Neuwirth to say that he wanted to see Mr. Neuwirth.

In this telephone conversation Mr. Friedman reported that Mr. McMahon had seen Mr. Neuwirth at McMahon's request and that Mr. McMahon had told Mr. Neuwirth that he had sold Geon stock Friday, February 22, and that he had placed the order, I guess if you could, at 1.30 in the morning by calling Marvin Rauch.

At that point Mr. Friedman said that Mr. Neuwirth called him in, and that Mr. McMahon repeated the story in the presence of Mr. Friedman. Then Mr. Friedman went on and Mr. McMahon said, there's nothing else I want to say, I don't know how important it is, but that Marvin Rauch had called me after February 22 and had asked me to tell the following story concerning the events of the week of February 21-February 22: He said that Mr. Rauch had told him to state that --

MR. TIMMENY: Your Honor, is there any purpose in getting this conversation from Mr. Korman? We already had it from Mr. Friedman, as I recall it.

THE COURT: I will allow it. This is pure hearsay, unadulterated hearsay, but I think I let it in before for just what he recalled, and I will do the same

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thing here.

A (Continuing) Mr. McMahon stated that Mr. Rauch had called him and that Mr. Rauch said that he was going to tell the following story, Mr. McMahon should stick to it: that Mr. Maione, Mr. McMahon's father-in-law, was supposed to have called Mr. Rauch on Thursday, February 21, and asked Mr. Rauch to sell Mr. McMahon's stock and Mr. Maione's stock.

On Friday, February 22, Mr. McMahon, when he learned that the trading was halted, was supposed to have called Mr. Rauch and said, "Did you sell my stock, something like that," and Mr. Rauch was supposed to have said, "Yes."

Then Mr. McMahon would say something like, "It's too late," or, "I got here too late," or something to that effect.

When Mr. Friedman finished telling the story that Mr. McMahon was supposed to fabricate, Mr. Connolly, myself and Mr. Kronoveth were quite surprised. We had just gotten off the telephone with the American Stock Exchange and Milton Gleith of the firm of Delson & Gordon who represented Edwards and Handley, and up until that time had represented Marvin Rauch. They had told us that Mr. Rauch had just testified and they related Mr. Rauch's testimony, and

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2 that testimony was exactly the same, almost word for word,
3 as the story that Mr. McMahon was supposed to fabricate.

4 Q What did you then do?

5 A We called back the exchange, told them that we
6 had interviewed Mr. McMahon and that we found out from
7 Mr. McMahon what we believed to be the true events that
8 occurred the preceding week, and that Mr. McMahon had also
9 told us that Mr. Rauch had requested him to tell a fabricat-
10 ed story and that this fabricated story was quite identical
11 to the testimony that Mr. Rauch had just given before the
12 American Stock Exchange.

13 THE COURT: Who did you tell that to?

14 THE WITNESS: We told that to a fellow named
15 Walker, I believe. Maybe Mr. Peterson was also on the
16 line, I don't recall. Mr. Gleith was no longer there.
17 We requested him to interview Marvin Rauch again.

7 18 The next day Mr. Gleith called Mr. Connolly
19 and me, and he was sort of embarrassed that he was in-
20 volved in it. He told us that he had no idea that Mr.
21 Rauch was lying, and we told him that we believed him
22 and Delson & Gordon immediately dropped the representation
23 of Mr. Rauch.

24 THE COURT: All right, we will take a short
25 recess.

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Korman-direct

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2 (Recess.)

3 THE COURT: You may proceed.

4 BY MR. STRUM:

5 Q Mr. Korman, if the sale of Geon's assets to
6 Burma is consummated, as is anticipated, to whom will
7 Geon's assets be sold?

8 A Bursub, Inc.

9 THE COURT: What?

10 THE WITNESS: Bursub, B-u-r-s-u-b, Inc.
11 It's a short name of Burma Subsidiary.

12 THE COURT: Does the American Stock Exchange
13 know that?

14 THE WITNESS: Yes, they do, your Honor.

15 THE COURT: All right.

16 Q Who is Bursub?

17 A Bursub is a subsidiary of Burma Oil, Incorporated,
18 a Delaware corporation, which, in turn, is a subsidiary
19 of Burma Oil, Limited, a United Kingdom corporation.

20 Q If the transaction is consummated, as anticipat-
21 ed, is it Bursub for whom Mr. George Neuwirth and Mr.
22 Bloom will go to work?

23 A Yes, it is.

24 THE COURT: Mr. Neuwirth will be vice-chairman
25 of Bursub?

1 THE WITNESS: Yes, he will, your Honor.

2
3 Q Therefore, as I assume Mr. Bloom and Mr. Neuwirth
4 will work for a non-public subsidiary of a non-public
5 corporation; is that correct?

6 A That is correct.

7 MR. STRUM: I have no further questions.

8 THE COURT: When is the closing scheduled to
9 be?

10 THE WITNESS: The stockholders' meeting is
11 scheduled for July 2nd.

12 THE COURT: That's the Geon stockholders?

13 THE WITNESS: That's right. We are supposed
14 to be notified by Burma this Friday as to what date the
15 closing will be. They have a range of ten days within
16 which after July 2nd that they can schedule the closing.

17 THE COURT: Well, now, when that happens, the
18 assets get transferred to Bursub?

19 THE WITNESS: Right. About \$24,000,000.

20 THE COURT: Burma hands over some cash, and then
21 what does Geon do, liquidate?

22 THE WITNESS: Liquidates and goes out of exist-
23 ence.

24 THE COURT: That will be a taxable liquidation,
25 I think.

THE WITNESS: Yes, sir. But only to the stock-

1 holders.

2 THE COURT: Well, nobody cares about the stock-
3 holders.

4 All right, thank you very much.

5 MR. STRUM: No further questions, your Honor.

6 THE COURT: Are there any questions?

7 MR. TIMMENY: I have just a few, your Honor.
8 Before I start, your Honor, may I ask for a clarification
9 on a ruling on the transcripts?

10 As I understand it, you are not accepting the
11 transcripts of the persons who testified here?

12 THE COURT: No, that's right, because I think
13 you had ample opportunity to cross-examine them here.
14 Anything you wanted to bring up in relation to the SEC
15 depositions I think could be brought up here.

16 As to the other people --

17 MR. TIMMENY: As to Rauch and McMahon --

18 THE COURT: As to Rauch and McMahon, I am not
19 doing it because they have taken the Fifth here, they were
20 not cross-examined, so that I rather think it might be
21 unfair to the defendants for me to look at that. And
22 also, as I mentioned to you, I think this really is a
23 final hearing, not only a preliminary hearing, but a final
24 one, and considering it as a final hearing I don't think
25 I could receive it.

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Korman-direct

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2 MR. TIMMENY: May I respectfully note an
3 exception to that, your Honor?

4 THE COURT: Oh, sure. Indeed you have.

5 MR. TIMMENY: Exception.

6 THE COURT: Well, this is not a criminal case,
7 but either way you preserve your right on appeal.

8 CROSS EXAMINATION

9 BY MR. TIMMENY:

10 Q Mr. Korman, I would like to return for a moment
11 to this conversation with Mr. Barbanell?

12 A Which conversation?

13 Q On February 22.

14 A At what time?

15 Q How many conversations did you have with him
16 on the 22nd?

17 A Two or three.

18 Q When was the first?

19 A The first was after the Geon stock had opened.

20 Q Roughly, what time was that?

21 A 20 to 11, I guess, 10.30.

22 Q What did he say to you in this conversation?

23 A Well, as I stated before, he said to me, well,
24 he said to Jack and me, because either we were both on
25 the phone or on the speaker phone, do you know that the

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opening on Geon was delayed and that it did finally open?
And we said we did. And we discussed the price it had
opened, what we considered to be -- what we could learn
from that, and that we thought it was a favorable indication
that everything was going as well as could be expected,
and that it was a normal trading day, and that was about
it.

Q Roughly, what time did this conversation
conclude?

A Oh, the conversation wasn't more than five
minutes in duration.

Q When did you next speak to Mr. Barbanell on the
22nd?

A The next time I spoke to him was when the price
started to slide rather precipitiously, and it was after
we had called Bernie Maas at the American Stock Exchange.
So I would place that -- and before Arthur Lee called us
back. So I would say that was around 11 o'clock.

Q What took place during this conversation?
What was said?

A Well, he asked us whether we realized that
the stock price had slipped precipitiously on heavy volume.
We said that we did. That we had just gotten off the
phone with Bernie Maas and had requested a trading halt.

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That we were waiting to hear something from the American Stock Exchange and that we didn't want to tie up the wires so we would jump off the phone.

Q Was anything else said?

A Not that I recall.

Q What about the next conversation?

A The next conversation was after the trading had been halted, and I place that at about 11.50ish, 20 to 12, quarter to 12.

Q What took place during this conversation?

A We discussed the fact that trading was halted, the fact that it had taken the Exchange so long to halt the trading, and that it had -- the stock price had dropped from 13-7/8 to approximately 11-7/8 between the time we had first called the Exchange and the time that they finally stopped the trading.

We also discussed the fact that we had received, we, Kaye, Schoeller, in particular Jack and me but other partners also, an unusual number of telephone conversations -- telephone calls that day from brokerage firms and we had no way to account for it.

Q Was there anything further in that conversation?

A Yes. He mentioned to me that, well, perhaps it was known or that it was known by several brokerage firms

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that the meeting was scheduled. And I said, "How do you
know that?" And he said, "Well, I told five or six
people."

Q Did he tell you who those people were?

A No, he didn't.

THE COURT: Did you ask him?

THE WITNESS: No, I didn't.

Q Did you ever learn who they were?

A At the Sunday board meeting I believe he men-
tioned the name of Royce, but I am not positive.

THE COURT: The name of what?

THE WITNESS: Stephen Royce. But I am not
positive, because I could be confusing recollections.
He was one of the people that hounded us incessantly during
the first three weeks, so I am not positive that Mr.
Barbanell mentioned it.

Q Were you present at all times during the board
meeting on the 22nd?

A No, I wasn't.

MR. STRUM: Excuse me. Did you say the 22nd?

MR. TIMMENY: The 21st, I am sorry.

THE WITNESS: I am sorry. I thought you were
saying the 21st also.

Q Thursday, the 21st.

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A Thursday, right. I was not present during all times.

Q Would you tell us, were you present at the start of the meeting?

A Yes, I was.

Q What happened after you got to the meeting?

A With respect to what?

Q Your activities. Just tell us what you did.

A I was there, I took down some numbers that Frank Bloom had given me. I also jotted down who was present. And then I basically listened to what was said by the people at the meeting.

Q At one point in the meeting I left to go see Mr. Connolly, and also to see where Mr. Kronoveth was.

Q Roughly, what time was it when you left?

A I couldn't even place it. Oh, yes, I could. I am sorry. It was about 4.30.

Q How long were you gone?

A Ten minutes.

Q Were you present for the rest of the meeting?

A Yes, I was.

MR. TIMMENY: We have no further questions, your Honor.

THE COURT: Mr. Gordon, do you have any ques-

1 mp Korman-direct 871

2 tions?

3 MR. GORDON: No, no q' your Honor.

4 MR. STRUM: I have no fur r questions, your
5 Honor.

6 THE COURT: All right, thank you, you are
7 excused.

8 (Witness excused.)

9 MR. STRUM: Your Honor, the defendants Geon,
10 Neuwirth and Bloom rest.

11 THE COURT: All right. Has the SEC got anything
12 in the way of rebuttal they want to put on or are they
13 resting?

14 MR. TIMMENY: No, your Honor, we have nothing
15 on rebuttal.

16 THE COURT: All right. I think the way I would
17 suggest we leave this, gentlemen, if you agree, I would
18 like briefs, I think, from each of you on the basis of
19 the factual material with references to the record, the
20 transcript, and on the law if there is anything you would
21 like to add to the briefs you have got, I will be glad to
22 receive that, too, but I am not asking you to do the same
23 thing all over again. And if you could just give me a
24 memorandum giving me your contentions and the facts which
25 you find support them keyed to the record and such

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2 additional authorities as you might wish to submit I would
3 be grateful.

4 How much time did you want to do that?

5 MR. TIMMENY: First, your Honor, we have to ask
6 the reporter how long it will be to get the transcripts.

7 THE COURT: Off the record.

8 (Discussion off the record.)

9 MR. STRUM: Your Honor, are you contemplating
10 a simultaneous submission of briefs?

11 THE COURT: Well, that is open to discussion.
12 I think it might be more useful to me perhaps if the Com-
13 mission served and filed a brief, and that would give the
14 defendants an opportunity to put in your briefs, and I
15 would want to give the Commission, if they would like to
16 reply to it, I would like to give them an opportunity to
17 do so.

18 Would that be a sensible way to do it?

19 MR. TIMMENY: Acceptable to us, your Honor.

20 MR. STRUM: Your Honor, at your pleasure, we
21 would be happy to do that or simultaneous.

22 THE COURT: I think it would make more sense if
23 we did it this way. And also when I receive these briefs,
24 when I receive all of them would you leave it up to me
25 whether or not to have oral argument?

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MR. STRUM: Certainly.

MR. TIMMENY: Yes, your Honor.

MR. GORDON: Yes, your Honor.

THE COURT: All right. Then how much time would the Commission want?

MR. TIMMENY: Your Honor, next week will be pretty much of a wipeout if we receive the transcripts in the middle of the week, and then with the holiday. Assuming we have the transcripts, say, by Wednesday or Thursday, about two weeks from the following Monday.

THE COURT: All right. Well, that would be around -- am I correct, that would be around the 22nd?

MR. TIMMENY: I think that's correct, your Honor.

THE COURT: That would be July 22. And what time after that would the defendants want?

MR. STRUM: Your Honor, I think if we had one week after the receipt of the SEC brief, that would be sufficient.

THE COURT: Do you have a problem at the SEC? I don't suppose very much. If you get them on the 22nd, that means they will have them in hand on the 22nd; is that right?

MR. TIMMENY: Yes.

THE COURT: All right. Do you want the 29th?

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2 How about Mr. Gordon?

3 MR. GORDON: That would be satisfactory, your
4 Honor.

5 THE COURT: All right. The 29th for the
6 defendant, and then if I gave the Commission until the
7 following Friday, would that be time enough?

8 MR. TIMMENY: Yes, your Honor.

9 THE COURT: You won't have very much I don't
10 imagine. That would be August 2nd. Does that make
11 sense?

12 MR. TIMMENY: The 5th would make more sense,
13 your Honor, because we are down in Washington.

14 THE COURT: Yes, I know you are. All right,
15 we will make it August 5th. Incidentally, I have signed
16 those orders that you have submitted on the consenting
17 defendants.

18 MR. TIMMENY: And there is one due, your Honor,
19 from Mr. Rauch.

20 THE COURT: Yes, I haven't gotten that. I
21 got the other two. I think I signed the ones on McMahon --

22 MR. TIMMENY: Your Honor, as I understand it,
23 we are still having some discussions with Mr. Rauch's
24 counsel, but I am sure we are going to reach agreement,
25 and we will tender that to you just as soon as possible.

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THE COURT: It would seem to me likely. All right. When you submit that, I will sign it, as long as the consent is there.

MR. GORDON: Your Honor, one other matter I would like to take up with the Court, if I may, for just one moment. One of the open questions that appears to me to exist in this case is what the standard should be against which my client's conduct should be judged, and in that respect there is a book by way of authority which is called A Preliminary Draft Of a Guide To Broker Dealer Compliance, which is put out by the SEC Advisory Committee on a model compliance program for broker dealers.

This to my knowledge has not been yet adopted, but is to --

THE COURT: Does it have to be adopted by --

MR. GORDON: Well, I don't know that any brokerage firm is yet using it. It is in the preliminary stages, but nonetheless I would submit to the Court that this particular authority as the report of an SEC Advisory Committee represents, or should represent the best thinking of the SEC on the subject.

THE COURT: Not necessarily the views of the Commission, I take it?

MR. TIMMENY: Not at all, your Honor.

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THE COURT: Well, I don't see --

MR. TIMMENY: It is not necessarily the best views, either, your Honor. I haven't had a chance to comment on it.

THE COURT: If what you are asking, Mr. Gordon, is whether you can refer to it, don't make me read it, but if you want to refer to it, and so can the Commission, I have no objection to that.

MR. GORDON: Fine.

MR. TIMMENY: That's a very preliminary working document, your Honor. It has been circulated in the industry among Commission officials for comment, and insofar as I know --

THE COURT: But you wouldn't hear any objection if he thinks he finds something helpful to him in there. I don't see any reason why he can't mention it.

MR. STRUM: Your Honor, I have one question, if I may. I have the exhibits that we offered and were accepted in evidence. How would you like to handle the submission of those exhibits?

THE COURT: I think what I would like to do on that is, will you want to have these defendant's exhibits in connection with preparation of your brief? You probably will. I think what I would like to have is

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2 have the Commission have all the exhibits while they are
3 preparing their statement, and then they file their
4 memorandum to send the exhibits on and you and Mr. Gordon
5 will have to work out some way by which you both have
6 them. Couldn't you do that? And when you file your
7 memo send me the exhibits.

8 MR. STRUM: That would be fine.

9 The exhibits we marked, your honor, the SEC
10 already has copies of each of these exhibits, I think.

11 THE COURT: Well, you gentlemen can check on
12 that.

13 MR. TIMMENY: One further point, your Honor,
14 on the brief with reference to the transcript. Would you
15 prefer that that be in the form of proposed findings?

16 THE COURT: I think I would just as soon have
17 it in narrative form providing the references are there.
18 These things are an awful nuisance.

19 MR. TIMMENY: All right, your Honor.

20 THE COURT: If that is convenient to you, I
21 think I would rather have it.

22 MR. TIMMENY: Your method is very acceptable,
23 your Honor.

24 THE COURT: All right. Is that acceptable to
25 you gentlemen?

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MR. STRUM: Yes, it is, your Honor.

MR. GORDON: It is, your Honor.

THE COURT: All right, fine. Thank you very
much, and good luck to you.

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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Lewis Korman	845			

EXHIBIT INDEX

<u>Defendant</u>	<u>Identification</u>	<u>In Evidence</u>
Geon		
D		848

